
Delaware Register of Regulations

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Volume 19 - Issue 7, Pages 538 - 687



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Proposed
Final

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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2015.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June	May 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1502

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1502 Professional Growth Salary Increments

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1502 Professional Growth Salary Increments. This regulation is being amended to provide current formatting and to eliminate unnecessary language.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 2, 2016 to Chris Kenton, Executive Director, Professional Standards Board, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to the Professional Standards Board and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Professional Standards Board and does not directly affect any changes to the protection of students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations do not change or weaken the ability to make decisions at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

1502 ~~Professional Growth~~ Graduate Level Salary Increments

(Effective 7/1/04)

1.0 Content

This regulation shall apply to ~~professional growth~~ graduate level salary increments for educators, pursuant to 14 **Del.C.** §1305 (a).

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
 - "**Critical Needs Areas**" means content, specialty, or administrative areas identified by the Department as areas of shortage in Delaware schools.
 - "**Department**" means the Delaware Department of Education.
 - "**Graduate Level Course**" means any course which is awarded graduate level credit by a regionally accredited college or university.
 - "**Graduate Level Course of Study**" means a non matriculated but focused and coherent program of study (e.g., a Certificate Program) which is directly linked to professional responsibilities.
 - "**Matriculated Graduate Credit**" means credit earned from a regionally accredited college or university earned toward a master's degree or a ~~doctorate~~ doctoral degree.
 - "**Skilled and Technical Sciences (STS)**" is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.
 - "**Specialist Degree Program**" means an organized program of study that is beyond a master's degree but below the ~~doctorate~~ doctoral consisting of a minimum of sixty (60) graduate semester hours [ninety (90) quarter hours] and a one (1) year supervised internship, or an equivalent program as determined by the Department. Examples of programs include a National Association of School Psychologists (NASP) approved program or an American Psychological Association (APA) accredited program including but not limited to the following: Master's of Education (MEd) with an Educational

Specialist (EdS) in School Psychology or a Master's of Science in School Psychology with a Advanced Certificate or Certificate of Advanced Study (CAS) in School Psychology. A master's degree in school psychology may be recognized as a specialist degree program if it meets the additional credit and internship requirements and any graduate credits earned in the program and conferral of the master's degree beyond thirty (30) may be counted beyond the master's degree level.

"Trades and Industry Teacher" means a Skilled and Technical Sciences Teacher, Trade and Industrial Education Teacher or Teacher of Trade and Industries.

"Two Years of College or Technical Training" means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of any one of the following options in the specific career area of certification (1) an Associate's degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research's Contren documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's Contren-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents of any one of the above including but not limited to equivalents from any combination of the above options.

3.0 Matriculation into Master's Degree

- 3.1 Educators who hold a bachelor's degree and who are enrolled in a master's degree program at a regionally accredited college or university may accrue graduate level credits toward salary increments on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).
- 3.2 No credits earned prior to the conferring of a bachelor's degree may be applied toward movement on the salary schedule.
- 3.3 Credits shall be applied in the order in which they were taken and no credit may be applied more than once toward movement on the salary schedule.
 - 3.3.1 Educators enrolled in a master's degree program at a regionally accredited college or university may apply for movement to the Bachelor's Plus 15 column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), upon completion of fifteen (15) graduate credits toward a master's degree.
 - 3.3.2 Educators enrolled in a master's degree program at a regionally accredited college or university may apply for movement to the Bachelor's Plus 30 column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), upon completion of thirty (30) graduate credits toward a master's degree.
 - 3.3.3 Upon completion of a master's degree program at a regionally accredited college or university, an educator may apply for movement to the master's degree column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

4.0 Post Master's Degree Course Work

- 4.1 Educators who hold an eligible master's degree from a regionally accredited college or university may accrue credits taken after the conferral date of the their first master's degree toward salary increments toward a Master's Degree Plus 15 graduate credits, a Master's Degree Plus 30 graduate credits, a

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Master's Degree Plus 45 graduate credits, or a ~~doctorate~~ doctoral degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a). All credits taken must be graduate level and must be:

- 4.1.1 Earned through a graduate level course of study clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 **Del.C.** Ch. 12, or
 - 4.1.2 Earned toward a second master's degree, or
 - 4.1.3 Matriculated graduate credits earned toward a ~~doctorate~~ doctoral degree.
- 4.2 Notwithstanding 4.1, graduate credits earned prior to the conferral of a master's degree may be applied toward movement on the salary schedule if the graduate credits are part of a Specialist Degree Program as long as the credits were earned after matriculating into the program.

5.0 Use of Undergraduate and Inservice Credits

- 5.1 Educators entitled to rightward movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), on the basis of inservice or undergraduate credits approved prior to July 1, 2004, shall continue to be entitled to such movement in the event of any future application for movement submitted after July 1, 2004.
- 5.1.1 For example, an educator who holds a Bachelor's Plus 15 or a Bachelor's Plus 30 approved prior to July 1, 2004 and based entirely on inservice or undergraduate credits, shall be entitled to move to a Master's Degree Plus 15 or Master's Degree Plus 30, whichever is applicable, upon completion of a master's degree program.
 - 5.1.2 ~~In order to use undergraduate credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Department by June 30, 2004. Undergraduate credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.~~
 - 5.1.3 ~~In order to use inservice credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Department by June 30, 2004. Inservice credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.~~

6.0 Credits Expressed as Semester Hours

- 6.1 All credits must be expressed in terms of semester hours.
- 6.2 College or university credits expressed in quarter hours will be converted by the Department to semester hours by multiplying the number of quarter hours by two thirds.

7.0 Acceptable Grades

All grades for graduate level credit submitted for a ~~professional growth~~ graduate level salary increments must be a grade of "B" or ~~better or satisfy the granting institution's standard for graduate level work~~ higher. In the case of credits earned on a pass/fail basis, a grade of "pass" is acceptable.

8.0 Skilled and Technical Sciences Teachers

- 8.1 A bachelor's degree equivalent for Skilled and Technical Sciences teachers (formerly Trade and Industrial Education) shall be two years of college or technical training and six years of work experience (14 **Del.C.** §1301).
- 8.2 Undergraduate credit in a matriculated bachelor's degree may be accepted in lieu of graduate credit for Skilled and Technical Sciences teachers who do not hold a bachelor's degree.
- 8.3 Initial placement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305, for Skilled and Technical Sciences teachers who have completed two years of college or technical training and six years of work experience, is at the bachelor's degree level.
- 8.4 In order to be eligible for movement on the basic salary schedule, Skilled and Technical Sciences teachers must possess a Standard Certificate in Skilled and Technical Sciences.

- 8.5 Movement beyond the bachelor's degree level on the basic salary schedule for Skilled and Technical Sciences teachers shall apply as follows:
- 8.5.1 Seventy-five (75) credits toward a bachelor's degree is equivalent to a Bachelor's Degree Plus 15 credits.
 - 8.5.2 Ninety (90) credits toward a bachelor's degree is equivalent to a Bachelor's Degree Plus 30 credits.
 - 8.5.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.
 - 8.5.4 A master's degree is equivalent to a Master's Degree Plus 15 credits on the basic salary schedule.
 - 8.5.5 A master's degree plus 15 credits is equivalent to a Master's Degree Plus 30 credits on the basic salary schedule.
 - 8.5.6 A Master's Degree Plus 30 credits is equivalent to a Master's Degree Plus 45 credits on the basic salary schedule.
 - 8.5.7 A Master's Degree Plus 45 credits is equivalent to a ~~doctorate~~ Doctoral degree on the basic salary schedule.

9.0 Alternate Routes to Certification Program

Graduate credits which are included in the approved Alternative Routes to Certification program, as defined in 14 **Del.C.**, Ch. 12, subchapter VI, are recognized as a graduate level course of study and may be applied by educators who hold master's degrees and who are enrolled in the approved Alternative Routes program toward a Master's Degree Plus 15 credits, a Master's Degree Plus 30 credits, a Master's Degree Plus 45 credits or a ~~doctorate~~ Doctoral degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

10.0 Eligibility for ~~Professional Growth~~ Graduate Level Salary Increments

- 10.1 ~~Where applicable and available, An applicant for a professional growth~~ graduate level salary increment must hold a ~~Standard or Professional Status Certificate issued pursuant to General Regulations for Certification of Professional Public School Personnel and the specific regulations as adopted for certification effective July 1, 1993 through August 31, 2003, or an Initial, Continuing, or Advanced License issued by the Department in accordance with 14 Del.C., Ch. 12, Subchapter III.~~
- 10.2 An educator employed on an Emergency Certificate pursuant to 14 **Del.C.** §1506 is eligible to receive a salary increment.

11.0 Acceptable Professional Degrees

- 11.1 In order to be applicable to ~~professional growth~~ graduate level salary increments, master's and ~~doctorate~~ doctoral degrees must be directly related to an area or specialty in which the educator is employed, ~~which has been identified as a critical needs area in K to 12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue or as required by regulation.~~
- 11.2 Any such request from a district or charter school, if applicable, must be in writing and must be submitted with the completed application for a salary increment.

12.0 Application Procedures

- 12.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305(a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.
 - 12.1.1 ~~An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to the school district office for transmittal to the Department. An applicant shall submit an electronic salary increment application through DEEDS.~~
 - 12.1.2 ~~The applicant shall arrange for official transcripts to be submitted by the college or university directly to the Department or delivered by the applicant in an unopened, unaltered envelope. The~~

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applicant shall arrange for official transcripts (unopened and unaltered) to be submitted by the institution of higher learning directly to the employer's Human Resources Office. The application will be reviewed and either approved or denied by the employer. The Department in its discretion may also accept verification of an official transcript by other means if the authenticity of the transcript can be made.

- 12.1.3 An application for a salary increment for the current fiscal year (July 1 to June 30) must be received in the Department no later than June 1. ~~This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment.~~ Applications received after June 1 will be approved effective the first day of the next fiscal year. If approved by the District/Charter, the application will be submitted to the Department for review and either denial or approval. Official transcripts must be submitted to the Department with the application.

13.0 Effective Date of Salary Adjustment

- 13.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Department.
- 13.1.1 The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed.
- 13.1.2 ~~This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment.~~
- ~~13.1.3~~ Applications received after June 1 will be approved effective the first day of the next fiscal year.
- 13.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.
- 13.3 No salary increment shall be retroactive to a prior fiscal year.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1590

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1590 Delaware Administrator Standards

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1590 Delaware Administrator Standards. The regulation concerns the nationally recognized standards that describe leadership behaviors and skills established for Delaware school leaders, and serves as the foundation for the preparation and appraisal of school leaders.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on February 2, 2016 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1590 Delaware Administrator Standards**1.0 ~~Interstate School Leaders Licensure Consortium~~ Professional Standards for Educational Leaders 2015**

1.1 ~~The Interstate School Leaders Licensure Consortium (ISLLC) Standards for School Leaders establish a common set of knowledge, skills and attributes expected of school leaders. The Professional Standards for Educational Leaders 2015 are organized around the domains, qualities, and values of leadership work that research and practice indicate contribute to students' academic success and well-being.~~

1.2 These nationally recognized standards describe leadership behaviors and skills established for Delaware School Leaders, and serve as the foundation for preparation and appraisal of school leaders. In accordance with 14 **Del.C.** §1205, this regulation shall be applied to all school administrators employed within the public schools and charter schools of the State of Delaware.

2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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"Administrator" means an educator who is licensed and certified as an administrator and is employed in an instructional role in a school district or charter school.

"Education Leader" means a district or charter school building level or central office administrator.

3.0 Standard 1

- 3.1 ~~An education leader promotes the success of every student by facilitating the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by all stakeholders. Effective educational leaders develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student.~~
- 3.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills Effective leaders:~~
- 3.2.1 ~~Collaboratively develop and implement a shared vision and mission~~ Develop an educational mission for the school to promote the academic success and well-being of each student;
- 3.2.2 ~~Collect and use data to identify goals, assess organizational effectiveness, and promote organizational learning~~ In collaboration with members of the school and the community and using relevant data, develop and promote a vision for the school on the successful learning and development of each child and on instructional and organizational practices that promote such success;
- 3.2.3 ~~Create and implement plans to achieve goals~~ Articulate, advocate, and cultivate core values that define the school's culture and stress the imperative of child-centered education; high expectations and student support; equity, inclusiveness, and social justice; openness, caring and trust; and continuous improvement;
- 3.2.4 ~~Promote continuous and sustainable improvement; and~~ Strategically develop, implement, and evaluate actions to achieve the vision for the school;
- 3.2.5 ~~Monitor and evaluate progress and revise plans.~~ Review the school's mission and vision and adjust them to changing expectations and opportunities for the school, and changing needs and situations of students;
- 3.2.6 Develop shared understanding of and commitment to mission, vision, and core values within the school and the community; and
- 3.2.7 Model and pursue the school's mission, vision, and core values in all aspects of leadership.

4.0 Standard 2

- 4.1 ~~An education leader promotes the success of every student by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth. Effective educational leaders act ethically and according to professional norms to promote each student's academic success and well-being.~~
- 4.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills Effective leaders:~~
- 4.2.1 ~~Nurture and sustain a culture of collaboration, trust, learning, and high expectations~~ Act ethically and professionally in personal conduct, relationships with others, decision-making, stewardship of the school's resources, and all aspects of school leadership;
- 4.2.2 ~~Create a comprehensive, rigorous, and coherent curricular program~~ Act according to and promote the professional norms of integrity, fairness, transparency, trust, collaboration, perseverance, learning, and continuous improvement;
- 4.2.3 ~~Create a personalized and motivating learning environment for students~~ Place children at the center of education and accept responsibility for each student's academic success and well-being;
- 4.2.4 ~~Supervise instruction~~ Safeguard and promote the values of democracy, individual freedom and responsibility, equity, social justice, community, and diversity;

- 4.2.5 ~~Develop assessment and accountability systems to monitor student progress;~~ Lead with interpersonal and communication skill, social-emotional insight, and understanding of all students' and staff members' backgrounds and cultures; and
- 4.2.6 ~~Develop the instructional and leadership capacity of staff;~~ Provide moral direction for the school and promote ethical and professional behavior among faculty and staff.
- 4.2.7 ~~Maximize time spent on quality instruction;~~
- 4.2.8 ~~Promote the use of the most effective and appropriate technologies to support teaching and learning; and~~
- 4.2.9 ~~Monitor and evaluate the impact of the instructional program.~~

5.0 Standard 3

- 5.1 ~~An education leader promotes the success of every student by ensuring management of the organization, operation and resources for a safe, efficient, and effective learning environment.~~ Effective educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being.
- 5.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills-~~Effective leaders:
 - 5.2.1 ~~Monitor and evaluate the management and operational systems~~ Ensure that each student is treated fairly, respectfully, and with an understanding of each student's culture and context;
 - 5.2.2 ~~Obtain, allocate, align, and efficiently utilize human, fiscal, and technological resources~~ Recognize, respect, and employ each student's strengths, diversity, and culture as assets for teaching and learning;
 - 5.2.3 ~~Promote and protect the welfare and safety of students and staff~~ Ensure that each student had equitable access to effective teachers, learning opportunities, academic and social support, and other resources necessary for success;
 - 5.2.4 ~~Develop the capacity for distributed leadership; and~~ Develop student policies and address student misconduct in a positive, fair, and unbiased manner;
 - 5.2.5 ~~Ensure teacher and organizational time is focused to support quality instruction and student learning.~~ Confront and alter institutional biases of student marginalization, deficit-based schooling, and low expectations associated with race, class, culture and language, gender and sexual orientation, and disability or special status;
 - 5.2.6 Promote the preparation of students to live productively in and contribute to the diverse cultural contexts of a global society;
 - 5.2.7 Act with cultural competence and responsiveness in their interactions, decision making, and practice; and
 - 5.2.8 Address matters of equity and cultural responsiveness in all aspects of leadership.

6.0 Standard 4

- 6.1 ~~An education leader promotes the success of every student by collaborating with faculty and community members, responding to diverse community interests and needs and mobilizing community resources.~~ Effective educational leaders develop and support intellectually rigorous and coherent systems of curriculum, instruction, and assessment to promote each student's academic success and well-being.
- 6.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills-~~Effective leaders:
 - 6.2.1 ~~Collect and analyze data and information pertinent to the educational environment~~ Implement coherent systems of curriculum, instruction, and assessment that promote the mission, vision, and core values of the school, embody high expectations for student learning, align with academic standards, and are culturally responsive;

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- 6.2.2 ~~Promote understanding, appreciation, and use of the community's diverse cultural, social, and intellectual resources~~ Align and focus systems of curriculum, instruction, and assessment within and across grade levels to promote student academic success, love of learning, the identities and habits of learners, and healthy sense of self;
- 6.2.3 ~~Build and sustain positive relationships with families and caregivers; and~~ Promote instructional practice that is consistent with knowledge of child learning and development, effective pedagogy, and the needs of each student;
- 6.2.4 ~~Build and sustain productive relationships with community partners.~~ Ensure instructional practice that is intellectually challenging, authentic to student experiences, recognizes student strengths, and is differentiated and personalized;
- 6.2.5 Promote the effective use of technology in the service of teaching and learning;
- 6.2.6 Employ valid assessments that are consistent with knowledge of child learning and development and technical standards of measurement; and
- 6.2.7 Use assessment data appropriately and within technical limitations to monitor student progress and improve instruction.

7.0 Standard 5

- 7.1 ~~An education leader promotes the success of every student by acting with integrity, fairness and in an ethical manner.~~ Effective educational leaders cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of each student.
- 7.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills~~ Effective leaders:
 - 7.2.1 ~~Ensure a system of accountability for every student's academic and social success~~ Build and maintain a safe, caring, and healthy school environment that meets the academic, social, emotional, and physical needs of each student;
 - 7.2.2 ~~Model principles of self-awareness, reflective practice, transparency, and ethical behavior~~ Create and sustain a school environment in which each student is known, accepted and valued, trusted and respected, cared for, and encouraged to be an active and responsible member of the school community;
 - 7.2.3 ~~Safeguard the values of democracy, equity, and diversity~~ Provide coherent systems of academic and social supports, services, extracurricular activities, and accommodations to meet the range of learning needs of each student;
 - 7.2.4 ~~Consider and evaluate the potential moral and legal consequences of decision making; and~~ Promote adult-student, student-peer, and school-community relationships that value and support academic learning and positive social and emotional development;
 - 7.2.5 ~~Promote social justice and ensure that individual student needs inform all aspects of schooling.~~ Cultivate and reinforce student engagement in school and positive student conduct; and
 - 7.2.6 Infuse the school's learning environment with the cultures and languages of the school's community.

8.0 Standard 6

- 8.1 ~~An education leader promotes the success of every student by understanding, responding to, and influencing the political, social, economic, legal and cultural context.~~ Effective educational leaders develop the professional capacity and practice of school personnel to promote each student's academic success and well-being.
- 8.2 ~~The education leader shall engage in and be responsible for the following leadership behaviors and skills~~ Effective leaders:
 - 8.2.1 ~~Advocate for children, families, and caregivers~~ Recruit, hire, support, develop, and retain effective and caring teachers and other professional staff and form them into an educationally effective faculty;

- 8.2.2 Act to influence local, district, state, and national decisions affecting student learning; and Plan for and manage staff turnover and succession, providing opportunities for effective induction and mentoring of new personnel;
- 8.2.3 Assess, analyze, and anticipate emerging trends and initiatives in order to adapt leadership strategies. Develop teachers' and staff members' professional knowledge, skills, and practice through differentiated opportunities for learning and growth, guided by understanding of professional and adult learning and development;
- 8.2.4 Foster continuous improvement of individual and collective instructional capacity to achieve outcomes envisioned for each student;
- 8.2.5 Deliver actionable feedback about instruction and other professional practice through valid, research-anchored systems of supervision and evaluation to support the development of teachers' and staff members' knowledge, skills, and practice;
- 8.2.6 Empower and motivate teachers and staff to the highest levels of professional practice and to continuous learning and improvement;
- 8.2.7 Develop the capacity, opportunities, and support for teacher leadership and leadership from other members of the school community;
- 8.2.8 Promote the personal and professional health, well-being, and work-life balance of faculty and staff; and
- 8.2.9 Tend to their own learning and effectiveness through reflection, study, and improvement, maintaining a healthy work-life balance.

9.0 Standard 7

- 9.1 Effective educational leaders foster a professional community of teachers and other professional staff to promote each student's academic success and well-being.
- 9.2 Effective leaders:
 - 9.2.1 Develop workplace conditions for teachers and other professional staff that promote effective professional development, practice, and student learning;
 - 9.2.2 Empower and entrust teachers and staff with collective responsibility for meeting the academic, social, emotional, and physical needs of each student, pursuant to the mission, vision, and core values of the school;
 - 9.2.3 Establish and sustain a professional culture of engagement and commitment to shared vision, goals, and objectives pertaining to the education of the whole child; high expectations for professional work; ethical and equitable practice; trust and open communication; collaboration, collective efficacy, and continuous individual and organizational learning and improvement;
 - 9.2.4 Promote mutual accountability among teachers and other professional staff for each student's success and the effectiveness of the school as a whole;
 - 9.2.5 Develop and support open, productive, caring, and trusting working relationships among leaders, faculty, and staff to promote professional capacity and the improvement of practice;
 - 9.2.6 Design and implement job-embedded and other opportunities for professional-learning collaboratively with faculty and staff;
 - 9.2.7 Provide opportunities for collaborative examination of practice, collegial feedback, and collective learning; and
 - 9.2.8 Encourage faculty-initiated improvement of programs and practices.

10.0 Standard 8

- 10.1 Effective educational leaders engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being.
- 10.2 Effective leaders:
 - 10.2.1 Are approachable, accessible, and welcoming to families and members of the community;

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- 10.2.2 Create and sustain positive, collaborative, and productive relationships with families and the community for the benefit of students;
- 10.2.3 Engage in regular and open two-way communication with families and the community about the school, students, needs, problems, and accomplishments;
- 10.2.4 Maintain a presence in the community to understand its strengths and needs, develop productive relationships, and engage its resources for the school;
- 10.2.5 Create means for the school community to partner with families to support student learning in and out of school;
- 10.2.6 Understand, value, and employ the community's cultural, social, intellectual, and political resources to promote student learning and school improvement;
- 10.2.7 Develop and provide the school as a resource for families and the community;
- 10.2.8 Advocate for the school and district, and for the importance of education and student needs and priorities to families and the community;
- 10.2.9 Advocate publicly for the needs and priorities of students, families, and the community; and
- 10.2.10 Build and sustain productive partnerships with public and private sectors to promote school improvements and student learning.

11.0 Standard 9

- 11.1 Effective educational leaders manage school operations and resources to promote each student's academic success and well-being.
- 11.2 Effective leaders:
 - 11.2.1 Institute, manage, and monitor operations and administrative systems that promote the mission and vision of the school;
 - 11.2.2 Strategically manage staff resources, assigning and scheduling teachers and staff to roles and responsibilities that optimize their professional capacity to address each student's learning needs;
 - 11.2.3 Seek, acquire, and manage fiscal, physical, and other resources to support curriculum, instruction, and assessment; student learning community; professional capacity and community; and family and community engagement;
 - 11.2.4 Are responsible, ethical, and accountable stewards of the school's monetary and non-monetary resources, engaging in effective budgeting and accounting practices;
 - 11.2.5 Protect teachers' and other staff members' work and learning from disruption;
 - 11.2.6 Employ technology to improve the quality and efficiency of operations and management;
 - 11.2.7 Develop and maintain data and communication systems to deliver actionable information for classroom and school improvement;
 - 11.2.8 Know, comply with, and help the school community understand local, state, and federal laws, rights, policies, and regulations so as to promote student success;
 - 11.2.9 Develop and manage relationships with feeder and connecting schools for enrollment management and curricular and instructional articulation;
 - 11.2.10 Develop and manage productive relationships with central office and school board;
 - 11.2.11 Develop and administer systems for fair and equitable management of conflict among students, faculty, and staff, leaders, families, and community; and
 - 11.2.12 Manage governance processes and internal and external politics toward achieving the school's mission and vision.

12.0 Standard 10

- 12.1 Effective educational leaders act as agents of continuous improvement to promote each student's academic success and well-being.
- 12.2 Effective leaders:

- 12.2.1 Seek to make school more effective for each student, teachers and staff, families, and the community;
- 12.2.2 Use methods of continuous improvements to achieve the vision, fulfill the mission, and promote the core values of the school;
- 12.2.3 Prepare the school and the community for improvement, promoting readiness, an imperative for improvement, instilling mutual commitment and accountability, and developing the knowledge, skills, and motivation to succeed in improvement;
- 12.2.4 Engage others in an ongoing process of evidence-based inquiry, learning, strategic goal setting, planning, implementation, and evaluation for continuous school and classroom improvement;
- 12.2.5 Employ situational-appropriate strategies for improvement, including transformational and incremental, adaptive approaches and attention to different phases of implementation;
- 12.2.6 Assess and develop the capacity of staff to assess the value and applicability of emerging educational trends and the findings of research for the school and its improvement;
- 12.2.7 Develop technically appropriate systems of data collection, management, analysis, and use, connecting as needed to the district office and external partners for support in planning, implementation, monitoring, feedback, and evaluation;
- 12.2.8 Adopt a systems perspective and promote coherence among improvement efforts and all aspects of school organization, programs, and services;
- 12.2.9 Manage uncertainty, risk, competing initiatives, and politics of change with courage and perseverance, providing support and encouragement, and openly communicating the need for, process for, and outcomes of improvement efforts; and
- 12.2.10 Develop and promote leadership among teachers and staff for inquiry, experimentation and innovation, and initiating and implementing improvement.

1 ~~The Interstate School Leaders Licensure Consortium Standards for School Leaders. Washington, D.C.: Council of Chief State School Officers, 2008. National Policy Board for Educational Administration (2015). Professional Standards for Educational Leaders 2015. Reston, VA: Author.~~

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 17 (18 **Del.C.** §311 & Ch. 17)
18 **DE Admin. Code** 602

PUBLIC NOTICE

602 Motor Vehicle Physical Damage Appraisers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance **Regulation 602** relating to **Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8]**. The docket number for this proposed AMENDED regulation is 2803-2015.

Amendments are being proposed to permit the use of digital imaging by appraisers. The Delaware Code authority for the change is 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: Rhonda.West@state.de.us

602 Motor Vehicle Physical Damage Appraisers

Statement of Purpose

18 **Del.C.**, Ch. 17 has been amended to include motor vehicle physical damage appraisers under the license requirements therein. The following regulation is required to set standards of conduct for appraisers and to implement the provisions of Chapter 17 and establish through regulations guideline procedures for the manner in which motor vehicle physical damage appraisers conduct their business. It is not contemplated that this regulation shall apply where no appraisal has been assigned. Recognition is given to the fact that many minor damage claims do not require a formal appraisal and to require such would be an undue burden upon the parties involved.

1.0 Definitions.

4.4 As used in 18 **Del.C.**, Ch. 17:

"Appraisal" is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;

"Appraiser" means a motor vehicle physical damage appraiser licensed under the provisions of 18 **Del.C.** Ch.17. This shall include all persons who in this State practice the appraisal of motor vehicle physical damage.

~~"Appraiser" is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;~~

"Motor vehicle" means any "motor vehicle" as defined in 21 **Del.C.** §101.

2.0 Display of Appraiser License.

2.4 Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Insurance Department.

3.0 Copies of Appraisal—Specification of New Parts.

3.4 The appraiser shall exchange a legible copy of his appraisal with that of the repair shop selected to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

4.0 ~~Personal Inspection Required.~~ **Manner of Inspection.**

- 4-4 No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspection. Notwithstanding the requirement that an appraisal be based upon a personal inspection, the appraiser making the appraisal may prepare an initial repair estimate on an automobile that has been damaged as a result of a covered loss either from the appraiser's personal inspection of the vehicle or from photographs, videos or electronically transmitted digital imagery of the automobile; provided, however, that no insurer may require an owner of an automobile to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal.

5.0 **Specified Repair Shop Requirement.**

- 5-4 No appraiser shall require that repairs be made in a specified repair shop.

6.0 **Supplementary Allowances.**

- 6-4 Every appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute.

7.0 **Conduct of Appraisers.**

- 7.1 Every appraiser shall:
- 7.1.1 Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings;
 - 7.1.2 approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals;
 - 7.1.3 disregard any efforts on the part of others to influence his judgment in the interest of the parties involved;
 - 7.1.4 prepare an independent appraisal of damage;
 - 7.1.5 inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e., catastrophe, death, failure of the parties to cooperate) render such inspection impossible.

8.0 **Gratuities or Other Consideration.**

- 8.1 No appraiser shall:
- 8.1.1 Receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer or, if self-employed, his customer;
 - 8.1.2 Traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him for his own benefit.

9.0 **Effective Date.**

This proposed amended regulation shall become effective 10 days after being published as a final regulation.

PROPOSED REGULATIONS

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 332, 6408, 6416 and 6417
(18 Del.C. §§311, 332, 6408, 6416 & 6417)
18 DE Admin. Code 1301

PUBLIC NOTICE

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1301** relating to **Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims**. The docket number for this proposed regulation is 2999.

The proposed amended regulation amends the current regulation to bring it in compliance with federal statutes and The Centers for Medicare & Medicaid Services' guidelines. Certain provisions are also being removed and placed in a new regulation for arbitration of disputes between health insurance carriers and non-network providers of emergency care services. The Delaware Code authority for this proposed regulation is 18 Del.C. §§311, 332, 6408, 6416, and 6417; and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 333 and 6408 (18 Del.C. §§311, 333 & 6408)
18 DE Admin. Code 1313

PUBLIC NOTICE

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1313** relating to **Arbitration of Health Insurance Disputes Between Carriers and Providers**. The docket number for this proposed regulation is 3001.

The proposed amended regulation adds clarifying definitions, revises the filing procedure for arbitration

requests, adds a provision addressing the allocation of arbitration costs, and adds a requirement for carriers to maintain arbitration records for 5 years after the completion of the arbitration process. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 333, and 6408; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
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Email: rhonda.west@state.de.us

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

1.0 Purpose and Statutory Authority

- 4-4 The purpose of this Regulation is to implement 18 **Del.C.** §333, which requires health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon a request for arbitration by the health care provider. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 333 and 6408 and 29 **Del.C.**, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Definitions

- 2-1 "**Carrier**" or "**insurance carrier**" ~~shall have the same meaning as defined at 18 **Del.C.** §333(a) (2)~~ means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.
- "**Department**" means the Delaware Insurance Department.
- 2-2 "**Health care provider**" or "**provider**" shall have the same meaning as defined at 18 **Del.C.** §333(a)(1).
- "**Health care services**" means any services or supplies included in the furnishing to any individual of medical care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.
- "**Health insurance**" means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.
- "**Petition filing**" means either each patient or each procedure code, determined by the basis of the filing.

3.0 Notice

- 3.1 At the time a carrier provides to a health care provider written notice of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in its entirety, the carrier shall give the provider

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written notice of the provider's right to arbitration. Such notice may be separate from or a part of the written notice of the carrier's decision. Any such notice given to a provider shall, at a minimum, contain the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322 or by sending an email to: DOI-arbitration@state.de.us. ~~You may also go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. to personally discuss the arbitration process.~~ All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

- 3.2 Such notice is not required if the Commissioner has determined, pursuant to Section 6.0 of this regulation, that the insurance carrier has a program that is substantially similar to the arbitration procedure provided pursuant to 18 **Del.C.** §333 and this Regulation.

4.0 Procedure

4.1 Petition for Arbitration

- 4.1.1 A health care provider or his authorized representative may request review of a carrier's final reimbursement decision through arbitration by delivering a Petition for Arbitration and all supporting documentation to the Department so that it is received by the Department no later than 60 days after the ~~date of mailing receipt~~ of the carrier's final reimbursement decision. The Department shall make available, by mail and on its web site, a standardized form for a Petition for Arbitration.
- 4.1.2 A health care provider or his authorized representative must deliver to the Department an original and ~~three copies~~ one copy of the Petition for Arbitration.
- 4.1.3 At the time of delivering the Petition for Arbitration to the Department, a health care provider or his authorized representative must also:
- 4.1.3.1 send a copy of the Petition and supporting documentation to the carrier by certified mail, return receipt requested;
- 4.1.3.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the carrier by certified mail, return receipt requested; and
- 4.1.3.3 deliver to the Department a non-refundable filing fee. ~~The fee shall be \$50 for claims of \$1,000 or less, in all other cases the fee shall be \$100~~ of \$100, per Petition filing.
- 4.1.4 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration, including the disputes described in 18 **Del.C.** §333(j)(1) - (3).

4.2 Response to Petition for Arbitration

- 4.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and ~~three copies~~ one copy of a Response with supporting documents or other evidence attached.
- 4.2.2 At the time of delivering the Response to the Department, the carrier must also:
- 4.2.2.1 send a copy of the Response and supporting documentation to the health care provider or his authorized representative by first class U.S. mail, postage prepaid; ~~and~~
- 4.2.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the health care provider or his authorized representative; and
- 4.2.2.3 Deliver to the Department a non-refundable filing fee. The fee shall be \$100 for each Petition filing.
- 4.2.3 The Department may return any non-conforming Response to the carrier.

- 4.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.
- 4.2.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier.
- 4.2.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than ~~seven~~ fifteen (15) days after notice of the default judgment.
- 4.3 Summary Dismissal of Petition by the Department Arbitrator
- 4.3.1 If the Department Arbitrator determines that the subject of the Petition is not appropriate for arbitration or is meritless on its face, the Department Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 4.4 Appointment of Arbitrator
- 4.4.1 Upon receipt of a proper Response petition filed in proper form, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.
- 4.4.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the patient whose care is at issue in the dispute.
- 4.5 Arbitration Hearing
- 4.5.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 4.5.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.
- 4.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 4.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
- 4.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.
- 4.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
- 4.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.
- 4.6 Arbitrator's Written Decision.
- 4.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
- 4.6.2 The Arbitrator's decision is binding upon the parties except as provided in 18 **Del.C.** §333(f).
- 4.7 Arbitration Costs
- 4.7.1 In arbitrations commenced pursuant to 18 **Del.C.** §333, the Arbitrator shall allocate to each party a percentage of the costs of arbitration. The arbitrator may award to the health care provider the filing fee, if the health care provider should prevail.

5.0 Carrier Recordkeeping Reporting Requirements

- 5.1 A carrier shall maintain written or electronic records for five years, after completion of the arbitration process, documenting all Petitions for Arbitration including, at a minimum, the following information:
- 5.1.1 The date the petition was filed;
 - 5.1.2 The name and identifying information of the health care provider on whose behalf the petition was filed;
 - 5.1.3 A general description of the reason for the petition; and
 - 5.1.4 The date and description of the Arbitration decision or other disposition of the petition.
- 5.2 A carrier shall file with its annual report to the Department the total number of Petitions for Arbitration filed, with a breakdown showing:
- 5.2.1 The total number of final reimbursement decisions upheld through arbitration; and
 - 5.2.2 The total number of final reimbursement decisions reversed through arbitration.
- 5.3 A carrier shall make available to the Department upon request any of the information specified in the foregoing subsections 4.1 and 4.2.

6.0 Exemption from Arbitration Requirement

- ~~6-4~~ Any carrier having a dispute resolution method established by contract with its providers which method the carrier believes to be substantially similar to the arbitration method described by this regulation may submit information regarding said method to the Insurance Commissioner for a determination as to whether the carrier should be exempted from the arbitration requirement of 18 **Del.C.** §333. The information submitted shall include a copy of the contractual language as well as any other information the carrier believes is relevant to the Insurance Commissioner's decision.

7.0 Non-Retaliation

- ~~7-4~~ A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises the right to file a Petition for Arbitration solely on the basis of such filing.

8.0 Confidentiality of Health Information

- ~~8-4~~ Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

9.0 Computation of Time

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

10.0 Effective Date

This Regulation shall become effective 10 days after being published as a final regulation.

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 Del.C. §§311 & 332)

PUBLIC NOTICE

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1315** relating to **Arbitration of Health Insurance Disputes Between Individuals and Carriers**. The docket number for this proposed regulation is 3001.

The proposed regulation contains provisions related to arbitrations under 18 Del.C. §332, which were previously contained in Regulation 1301 and also contains modifications of some of those provisions. The Delaware Code authority for this proposed regulation is 18 Del.C. §§311 and 332; and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 Del.C. §332, which requires health insurance carriers to submit to arbitration disputes with a covered person or authorized representative regarding adverse determinations upon a request for arbitration by the covered person. This Regulation is promulgated pursuant to 18 Del.C. §§311 and 332; and 29 Del.C. Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Definitions

"Adverse determination" means a decision by a carrier to deny (in whole or in part), reduce, or terminate health insurance benefits or a determination that an admission or continued stay, or course of treatment, or other covered health service does not satisfy the insurance policy's clinical requirements for appropriateness, necessity, health care setting and/or level of care.

"Authorized representative" means an individual who a covered person willingly acknowledges to represent his interests during the arbitration process, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative.

"Carrier" means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan

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of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

“Covered person” means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a carrier, pursuant to which the carrier provides health insurance for such person or persons.

“Department” means the Delaware Insurance Department.

“Duration of an Emergency Medical Condition” means a period of time that begins with an Emergency Medical Condition and ends when the Emergency Medical Condition is either treated or stabilized as such stabilization is evidenced by post stabilization care [as referenced in 18 Del.C. §§3349(c)(3) and 3565(c)(3)] in a hospital where such post stabilization care is not within the definition of emergency care services.

“Emergency care provider” means a provider of emergency care services including a provider who also provides health care services that aren’t emergency care services.

“Emergency care services” means those services identified in 18 Del.C. §§3349(d) and 3565(d) performed at any time during the Duration of an Emergency Medical Condition, including any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition including air and sea ambulances so long as medical necessity criteria are met.

“Emergency Medical Condition” shall have the meaning assigned to it by 18 Del.C. §§3349(e) and 3565(e).

“Final coverage decision” means the decision by a carrier at the conclusion of its internal review process upholding, modifying or reversing its adverse determination.

“Grievance” means a request by a covered person or his authorized representative that a carrier review an adverse determination by means of the carrier’s internal review process.

“Health care services” means any services or supplies included in the furnishing to any individual of medical care or hospitalization, or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

“Health insurance” means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.

“Network Emergency Care Provider” is a provider who has a written participation agreement with the carrier to provide emergency care services or governing payment of emergency care services.

“Non-Network Emergency Care Provider” is a provider who is not a Network Emergency Care Provider.

“Provider” means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides health care services in this State.

3.0 Arbitration Procedure to Review a Carrier’s Final Coverage Decision

3.1 Petition for Arbitration

- 3.1.1 A covered person or his authorized representative may request review of a carrier’s final coverage decision through arbitration by delivering a Petition for Arbitration and all supporting documentation to the Department so that it is received by the Department within sixty days of receipt by the covered person of written notice of the carrier’s final coverage decision. The Department shall make available, by mail and on its web site, a standardized form for a Petition for Arbitration.**
- 3.1.2 A covered person or his authorized representative must deliver to the Department an original and one copy of the Petition for Arbitration and all supporting documentation.**
- 3.1.3 At the time of delivering the Petition for Arbitration and supporting documentation to the Department, a covered person or his authorized representative must also:**

PROPOSED REGULATIONS

- 3.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 3.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
- 3.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed unless otherwise agreed by the parties.
- 3.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
- 3.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties, other than information otherwise obtained by the Arbitrator pursuant to this Regulation, that has not been provided to the opposing party with at least five days' notice, except claims of a continuing nature that are set out in the filed papers.

3.6 Arbitrator's Written Decision.

- 3.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
- 3.6.2 The Arbitrator's decision shall include allowable charges and payments for each service subject to arbitration for a period that will end on the 360th day after the date of the Arbitrator's decision.
- 3.6.3 The Arbitrator's decision is binding upon the carrier except as provided in 18 **Del.C.** §332(g).

3.7 Arbitration Costs.

- 3.7.1 In arbitrations commenced pursuant to 18 **Del.C.** §332 and Section 3.0 of this Regulation, the carrier shall pay the costs of arbitration, any compensation paid to the arbitrator not to exceed \$250, and any additional related fees which exceed the filing fee of \$75 required to commence arbitration. In the event the covered person prevails, the \$75 filing fee paid by the covered person will be refunded by the carrier.

4.0 Carrier Recordkeeping and Reporting Requirements

- 4.1 A carrier shall maintain written or electronic records documenting all grievances and Petitions for Arbitration including, at a minimum, the following information:
 - 4.1.1 For each grievance:
 - 4.1.1.1 the date received;
 - 4.1.1.2 name and plan identification number of the covered person on whose behalf the grievance was filed;
 - 4.1.1.3 a general description of the reason for the grievance; and
 - 4.1.1.4 the date and description of the final coverage decision.
 - 4.1.2 For each Petition for Arbitration:
 - 4.1.2.1 the date the Petition was filed;
 - 4.1.2.2 name and plan identification number of the covered person on whose behalf the Petition was filed;
 - 4.1.2.3 a general description of the reason for the Petition; and
 - 4.1.2.4 date and description of the Arbitrator's decision or other disposition of the Petition.
- 4.2 A carrier shall file with its annual report to the Department the following information:
 - 4.2.1 The total number grievances filed.
 - 4.2.2 The total number of Petitions for Arbitration filed, with a breakdown showing:
 - 4.2.2.1 the total number of final coverage decisions upheld through arbitration; and
 - 4.2.2.2 the total number of final coverage decisions reversed through arbitration.

5.0 Non-Retaliation

- 5.1 A carrier shall not disenroll, terminate or in any way penalize a covered person who exercises his rights to file a grievance or Petition for Arbitration solely on the basis of such filing.
- 5.2 A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises, on behalf of a covered person, the right to file a grievance, or Petition for Arbitration solely on the basis of such filing.

6.0 Confidentiality of Health Information

Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

7.0 Computation of Time

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

8.0 Effective Date

This Regulation shall become effective ten days after being published as a final regulation.

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3349, 3565 and 6408
(18 Del.C. §§311, 3349, 3565 & 6408)

PUBLIC NOTICE

1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1316** relating to **Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services**. The docket number for this proposed regulation is 3002.

The proposed regulation moves the provisions related to arbitrations under 18 Del.C. §§3349 and 3565 from current Regulation 1301 to a stand-alone regulation. The Delaware Code authority for this proposed regulation is 18 Del.C. §§311, 3349, and 3565; and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379

Fax: (302) 739-5566

Email: rhonda.west@state.de.us

1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services

1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 **Del.C.** §§3349 and 3565, which require the Delaware Insurance Department to establish and administer procedures for arbitration of disputes between health insurance carriers and non-network providers of emergency care services. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 3349, and 3565; and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Definitions

"Carrier" means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

"Covered person" means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a carrier, pursuant to which the carrier provides health insurance for such person or persons.

"Department" means the Delaware Insurance Department.

"Duration of an Emergency Medical Condition" means a period of time that begins with an Emergency Medical Condition and ends when the Emergency Medical Condition is either treated or stabilized as such stabilization is evidenced by post stabilization care, as referenced in 18 **Del.C.** §§3349(d)(3) and 3565(d)(3), in a hospital where such post stabilization care is not within the definition of emergency care services.

"Emergency care provider" means a provider of emergency care services including a provider who also provides health care services that aren't emergency care services.

"Emergency care services" means those services identified in 18 **Del.C.** §§3349(d) and 3565(d) performed at any time during the Duration of an Emergency Medical Condition, including any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition including air and sea ambulances so long as medical necessity criteria are met.

"Emergency Medical Condition" shall have the meaning assigned to it by 18 **Del.C.** §§3349(e) and 3565(e).

"Health care services" means any services or supplies included in the furnishing to any individual of medical care or hospitalization, or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

"Health insurance" means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.

"Network carrier" is a carrier that has a written participation agreement with a provider to pay for emergency care services.

"Network Emergency Care Provider" is a provider who has a written participation agreement with the carrier to provide emergency care services or governing payment of emergency care services.

"Non-Network Emergency Care Provider" is a provider who is not a Network Emergency Care Provider.

"Provider" means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a

licensed clinical facility, and a licensed hospital, who or which provides health care services in this State.

3.0 Provisions Applicable to Arbitration Pursuant to 18 Del.C. §§3349 and 3565

- 3.1 If a carrier and a non-network emergency care provider cannot agree on payment to the provider for emergency care services, within 30 days after the carrier has received from the provider clean claims, as defined in Section 4.0 of Regulation 1310, for such services, either the carrier or the non-network emergency care provider (the "Petitioner") may petition for arbitration pursuant to this Section 3.0 and 18 Del.C. §§3349 or 3565 and the other party (the "Respondent") shall submit to such arbitration.
- 3.2 Prior to the Arbitration Hearing, the Arbitrator shall at a minimum receive the following written evidence from the parties:
- 3.2.1 The highest allowable charge for each emergency care service subject to arbitration allowed by the carrier for any other network or non-network emergency care provider during the full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department;
- 3.2.2 If subsection 3.4.1 applies, the carrier's highest allowable charge for each emergency care service subject to arbitration pursuant to the non-network provider's most recent participation agreement with the carrier;
- 3.2.3 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any other carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department; and
- 3.2.4 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any network carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department.
- 3.2.5 Each party shall also submit in writing the allowable charge each party would accept for each emergency care service subject to arbitration and each party's history of the negotiations between the parties relating to each such emergency care service.
- 3.2.6 Each party shall also submit a written list of all emergency care services subject to arbitration and the date each service was delivered to the patient. The Arbitrator's decision shall apply to each such service from the date of each service and the date of all other emergency care service subject to arbitration through the date provided for in subsection 3.12.2.
- 3.2.7 A copy of all information submitted to the Arbitrator by a party pursuant to this Section 3.0 will also be given to the other party except for information submitted by the provider pursuant to subsections 3.2.3 and 3.2.4. subsection 3.2.3 and subsection 3.2.4 information will be redacted by the Arbitrator and given to the carrier to insure that the carrier cannot determine pricing information relating specifically to other carriers.
- 3.3 All information specified in subsection 3.2 of this Regulation provided to the Arbitrator shall presumptively be considered trade secret or confidential financial information under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.
- 3.4 The Arbitrator shall follow the guidelines listed in this subsection 3.4 as a basis for determining the carrier's payment to the non-network emergency care provider for each emergency care service subject to arbitration unless the evidence adduced at arbitration supports a different payment.
- 3.4.1 Payments for emergency care services to a non-network emergency care provider who was a network emergency care provider at any time prior to the date the provider delivered the emergency care services which are the subject of the arbitration. The Arbitrator shall direct the carrier to pay the non-network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range: (1) the allowable charges submitted to the Arbitrator pursuant to subsection 3.2.2, subject to COLA adjustments as may be published in bulletins by the Commissioner from time to time; and (2) the allowable charges

PROPOSED REGULATIONS

- submitted to the Arbitrator pursuant to subsection 3.2.3. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.
- 3.4.2 Payments for emergency care services to a provider who was never a network emergency care provider with the carrier. The Arbitrator shall direct the carrier to pay the non-network emergency care provider who was never a network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range: (1) the allowable charges submitted to the carrier pursuant to subsection 3.2.1; and (2) the allowable charges submitted to the Arbitrator pursuant to subsection 3.2.3. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.
- 3.5 Changes in the membership of a provider group will not affect the remaining group member(s) insofar as the application of this Section 3.0. In the absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.
- 3.6 Carrier Payments Prior to Arbitration.
- 3.6.1 Prior to Arbitrator's decision pursuant to subsection 3.12, the carrier will pay directly to the non-network emergency care provider the highest amount provided for in subsection 3.2.1 for each emergency care service subject to arbitration.
- 3.6.2 All payments due the non-network provider pursuant to subsection 3.6.1 will be paid within 30 days after the carrier has received from the provider a clean claim, as defined in Section 4.0 of Regulation 1310, for each emergency care service subject to arbitration.
- 3.6.3 The Arbitrator will direct the carrier and the provider to pay, in the case of the carrier, or refund in the case of the provider, the difference between payments made pursuant to this subsection 3.6 and the payments determined by the Arbitrator pursuant to subsection 3.4.
- 3.7 Procedures for Arbitration Pursuant to this Section 3.0.
- 3.7.1 Either the non-network emergency care provider or his authorized representative or the carrier, after the carrier pays the provider pursuant to subsection 3.6.1, may request arbitration by delivering to the Department an original and one copy of the Petition for Arbitration, (with all applicable information required by subsection 3.2 attached) so that the Petition is received by the Department no later than 60 days from the date the carrier was required to pay the provider pursuant to subsection 3.6.1.
- 3.7.2 At the time of delivering the Petition for Arbitration to the Department, the Petitioner or his authorized representative must also:
- 3.7.2.1 send a copy of the Petition and supporting documentation to the Respondent by certified mail, return receipt requested, except as provided by subsection 3.2.7;
- 3.7.2.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the Respondent by certified mail, return receipt requested; and
- 3.7.2.3 deliver to the Department a \$75.00 filing fee.
- 3.7.3 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration.
- 3.8 Response to Petition for Arbitration
- 3.8.1 Within 20 days of receipt of the Petition, the Respondent or his authorized representative must deliver to the Department an original and one copy of a Response with all information required by subsection 3.2 attached.
- 3.8.2 At the time of delivering the Response to the Department, the Respondent must also:
- 3.8.2.1 send a copy of the Response and supporting documentation to the Petitioner or his authorized representative by certified mail, postage prepaid, except as provided by subsection 3.2.7; and
- 3.8.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the Petitioner or his authorized representative.
- 3.8.3 The Department may return any non-conforming Response to Respondent.

- 3.8.4 If the Respondent fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.
- 3.8.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the Respondent.
- 3.8.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than seven days after notice of the default judgment.
- 3.9 Summary Dismissal of Petition by the Arbitrator
- 3.9.1 If the Arbitrator determines that the subject of the Petition is not appropriate for arbitration, the Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 3.10 Appointment of Arbitrator
- 3.10.1 Upon receipt of a proper Response, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.
- 3.10.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties.
- 3.11 Arbitration Hearing
- 3.11.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 3.11.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.
- 3.11.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 3.11.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
- 3.11.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.
- 3.11.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
- 3.11.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this Section 3.0. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.
- 3.12 Arbitrator's Written Decision.
- 3.12.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
- 3.12.2 The Arbitrator's decision is binding upon the parties with respect to allowable charges and payments for each emergency care service subject to arbitration for a period that will end on the 360th day after the date of the Arbitrator's decision.
- 3.13 Arbitration Costs.
- 3.13.1 The non-prevailing party at arbitration shall reimburse the Commissioner for the expenses related to the arbitration process.
- 3.14 Arbitrations subject to this Regulation 1316 shall not be subject to the provisions of Regulation 1313.

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- 3.15 Exemption from Arbitration. 18 Del.C. §§3349(b) and 3565(b) shall not apply to health insurance policies exempt from state regulation under federal law or regulation. On a quarterly basis, each carrier shall provide a list of exempt plan numbers to the Department. The Department shall maintain a public register of exempt plan numbers. The placement of an exempt plan number on the register shall constitute a rebuttable presumption that the policy plan is not subject to the provisions of this regulation. A carrier that clearly identifies whether a plan is either exempt or non-exempt on the face of an identification or membership card shall not be required to comply with the provisions of this section but only with respect to the plans for which such identification or membership cards display the group status. The failure of a carrier to either (1) provide the Department with a list of exempt plan numbers, or (2) clearly identify if a plan is exempt or non-exempt on the face of an identification or membership card shall constitute a rebuttable presumption that the plan is subject to the provisions of this regulation.
- 3.16 A carrier and a non-network emergency care provider can mutually agree in writing to submit to arbitration pursuant to Section 3.0 payment disputes relating to the delivery of emergency care services to patients covered by a plan otherwise exempt from arbitration, except that such agreement will only apply to the plan and the services stated therein.
- 3.17 The provisions of this regulation shall not apply to Medicaid or any other health insurance program where the review of coverage determinations is otherwise regulated by the provisions of other state or federal laws or regulations.

4.0 Confidentiality of Health Information

Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

5.0 Computation of Time

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

6.0 Effective Date

This Regulation shall become effective ten days after being published as a final regulation.

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
SECURITIES UNIT

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

PUBLIC NOTICE

104 Privacy Policies For Commercial Online Sites, Services, and Applications

The Consumer Protection Unit of the Department of Justice hereby gives notice of proposed **Consumer Protection Unit Regulation 104** relating to **Privacy Policies For Commercial Online Sites, Services, and Applications**.

Senate Substitute No. 1 for Senate Bill No. 68, as amended by Senate Amendment Nos. 1, 2, and 3, of the 148th General Assembly requires operators of commercial Internet websites, online or cloud computing services,

online applications, or mobile applications that collect personally identifiable information through the Internet about individual users residing in Delaware who use or visit the operator's commercial internet website, online or cloud computing service, online application, or mobile application to make their privacy policies conspicuously available on their internet website, online or cloud computing service, online application, or mobile application as of January 1, 2016. The applicable legislation is now found in Chapter 12C, Title 6 of the **Delaware Code**.

The proposed regulation sets forth optional "safe harbor" language that operators may, but are not required to, use in their privacy policies that the Consumer Protection Unit has determined will comply with the disclosure requirements of 6 **Del.C.** §1205C(b). The proposed regulation also declares that the Consumer Protection Unit will treat privacy policies which comply with the disclosure requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§22575–22579, as also complying with the requirements of 6 **Del.C.** §1205C. The proposed regulation does not foreclose operators from using other language and formats of their own choosing to comply with 6 **Del.C.** §1205C(b). The Delaware Code authority for this proposed regulation is 29 **Del.C.** §2521.

The Consumer Protection Unit will not hold a public hearing on the proposed regulation. The proposed regulation appears below. Any person who wishes to submit suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation must submit the same by USPS Mail or email no later than 4:30 p.m. EST, Monday, February 1, 2016. Submissions by email should include "Privacy Policies For Commercial Online Sites, Services, and Applications" in the subject line of the email. Submissions must be directed to:

Christian Douglas Wright
Director, Consumer Protection Unit
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
email: christian.wright@state.de.us

104 Privacy Policies For Commercial Online Sites, Services, and Applications

1.0 Introduction and Purpose

The purpose of this regulation is to provide operators of commercial Internet websites, online or cloud computing services, online applications, or mobile applications with optional "safe harbor" language that they may, but are not required to, use in their privacy policies that the Consumer Protection Unit has determined will comply with the disclosure requirements of 6 **Del.C.** §1205C(b).

2.0 Effective Date

The effective date of this regulation is Monday, March 14, 2016.

3.0 Definitions

3.1 The following terms are defined in 6 **Del.C.** §1202C and have the same meaning when used in this regulation:

"Content"

"Internet"

"Operator"

"Personally identifiable information"

"Post"

"User"

3.2 For purposes of this regulation, the term "site, service, or application" means an Internet website, online or cloud computing service, online application, or mobile application.

4.0 Optional Safe Harbor Language for Privacy Policies

4.1 Use of the language and format in this Section 4.0 is not mandatory. Operators are free to use alternative language and formats of their choosing that comply with 6 Del.C. §1205C(b).

4.2 Identification of the Categories of Personally Identifiable Information Collected and the Third-Party Persons to Whom Such Information May Be Disclosed

4.2.1 Under 6 Del.C. §1205C(b)(1), an operator of a commercial site, service, or application is required to identify in its privacy policy the categories of personally identifiable information it collects from users of its site, service, or application, and the categories of third-party persons to whom such information may be disclosed.

4.2.2 An operator shall be deemed to have identified “the categories of personally identifiable information” required by 6 Del.C. §1205C(b)(1), when the operator provides the following disclosures in its privacy policy, if the operator collects, stores, or uses the specified kind of personal information:

Collecting Personally Identifiable Information

We may collect, store, and use the following kinds of personal information:

- Information you provide to us when you register with our [site/service/application], including your [specify the personal information provided by the user upon registration that you collect, store, and use—examples might include first and last names, e-mail address, physical address, telephone number, social security number].
 - Information you provide when completing a profile on our [site/service/application], including your [specify the personal information provided by the user upon registration that you collect, store, and use—examples might include first and last names, gender, age, date of birth, education status, employment status, relationship status, hobbies and other interests].
 - Information you provide when you subscribe to a newsletter or other periodic report or notification that we provide, including [specify the personal information provided by the user when they subscribe that you collect, store, and use—such as first and last names and an email address].
 - Information about your device or computer, including [your IP address, geolocation, browser type, browser version, device type, operating system, referring [site/service/application]].
 - Information about your visits to and use of the [site/service/application], including how you use the [site/service/application], such as [specify the type of information—examples might include the timing, length, frequency, and pattern of use, and the pages, screens, or other displays of information looked at by the user].
 - Information relating to any purchases you make of our [goods/services] or any other transactions that you enter into through our [site/service/application], including [specify the information—examples might include first and last names, e-mail address, physical address, telephone number, and payment card information].
 - Information that you post to our [site/service/application] for publication on the Internet, including [specify the information—examples might include first and last names, user names, profile pictures, and the actual content of what a user posts].
 - Information contained in or relating to any communication that you send to us or send through our [site/service/application], including [specify the information—examples might include the content of the communication and metadata associated with it].
 - [Identify and describe any other any other personal information that collected by the site, service, or application, including when or how the operator collects it.]
- 4.2.3 An operator shall be deemed to have identified “the categories of third-party persons” required by 6 Del.C. §1205C(b)(1), when the operator provides the following disclosures in its privacy policy, if the operator shares a user’s personally identifiable information with the specified third-party persons:

Disclosing Personally Identifiable Information With Third Parties

We may disclose personally identifiable information we collect from you to the following third parties, for the purposes specified:

- **Agents.** [Describe any agents to whom the operator may disclose the information, why the operator may disclose it to them, and whether the agents can retain, store, or use the information for any other purposes—examples might include an outside shipping company used to fulfill and deliver orders, or a credit card company that processes sales transactions].
- **Service Providers.** We use third parties to provide [specify the services provided] on our [site/service/application]. If [or When] you sign up for [specified services], we will share [specify the information that will be shared] to the extent necessary in order for the third party to provide that service. [Specify whether the service providers can retain, store, or use the information for any other purposes].
- **Affiliates.** We may disclose your personal information to our affiliates, including [the operator’s employees, officers, and directors, the operator’s subsidiaries, the operator’s ultimate parent company, and any other subsidiary of the operator’s ultimate parent company, as appropriate], in order to [specify why the operator might disclose the information to affiliates, and whether the affiliates can retain, store, or use the information for any other purposes].
- **Other Third Parties.** We may disclose to [identify any other third parties to whom the operator may disclose a user’s personal information] your [identify what information is disclosed], in order to [specify why the operator may disclose the information to these other third parties, and whether these other third parties can retain, store, or use the information for any other purposes].
- **Other Disclosures.** We may also disclose personally identifiable information we collect from you when we are required to do so by law, or when we believe that disclosure is necessary to protect our rights or to comply with a judicial proceeding, court order, or legal process served on our [site/service/application].

4.3 Description of Process to Review and Request Changes to Personally Identifiable Information Collected

4.3.1 Under 6 Del.C. §1205C(b)(2), an operator of a commercial site, service, or application is required to describe in its privacy policy whether it maintains a process that allows users of the site, service, or application to request changes to their personally identifiable information collected by the operator through the site, service, or application, and, if it maintains such a process, the operator must also describe that process.

4.3.2 An operator that maintains a process that allows users of its site, service, or application to request changes to their personally identifiable information collected by the operator through the site, service, or application, shall be deemed to have made disclosure required by 6 Del.C. §1205C(b)(2) when the operator provides the following disclosure in its privacy policy:

Making Changes To Your Information

This [site/service/application] permits you to review and make changes to the personally identifiable information we collect from you. You can make changes by [describe process for a user to review and make changes—examples of such processes could include logging in to the site, service, or application and using available tools, contacting customer support, or by contacting the operator by specified telephone, postal mail, or email].

4.3.3 An operator that does not maintain a process that allows users of its site, service, or application to request changes to their personally identifiable information collected by the operator through the site, service, or application, shall be deemed to have made disclosure required by 6 Del.C. §1205C(b)(2) when the operator provides the following disclosure in its privacy policy:

Making Changes To Your Information

This [site/service/application] does not maintain a process by which you can review and make changes to the personally identifiable information we collect from you.

4.4 Description of Process for Notifying Users of Material Changes

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- 4.4.1 Under 6 **Del.C.** §1205C(b)(3), an operator of a commercial site, service, or application is required to describe in its privacy policy how it notifies users of its site, service, or application of material changes to its privacy policy.
- 4.4.2 An operator shall be deemed to have made the disclosure required by 6 **Del.C.** §1205C(b)(3) when the operator provides the following disclosure in its privacy policy:
We may modify this privacy policy at any time. If we do, we will [post the revised version here/notify you via email/describe other method of notifying users]. You should periodically check here for the most up-to-date version of this privacy policy. Any changes to the privacy policy will not be retroactively applied and will not alter how we handle personally identifiable information we previously collected from you.
- 4.5 Identification of the Effective Date
- 4.5.1 Under 6 **Del.C.** §1205C(b)(4), an operator of a commercial site, service, or application is required to identify the effective date of its privacy policy.
- 4.5.2 An operator shall be deemed to have made the disclosure required by 6 **Del.C.** §1205C(b)(4) when the operator provides the following disclosure in its privacy policy:
This privacy policy is effective as of [month day, year].
- 4.6 Description of Response to Web Browser “Do Not Track” Signals
- 4.6.1 Under 6 **Del.C.** §1205C(b)(5), an operator of a commercial site, service, or application is required to disclose how the site, service, or application responds to web browser “do not track” signals or other mechanisms that are intended to give users the ability to exercise choice regarding the collection of personally identifiable information about a user’s activities, through the use of persistent identifiers such as “cookies,” “pixel tags,” and “web beacons,” over time and across third-party sites, services, or applications. This applies to all persistent identifiers used on the operator’s site, service, or application, regardless of whether those persistent identifiers are placed on the site, service, or application by the operator or a third party such as an advertising service.
- 4.6.2 An operator shall be deemed to have made the disclosure required by 6 **Del.C.** §1205C(b)(5) when the operator provides the following disclosure in its privacy policy:
Certain web browsers may provide an option by which you may have the browser inform websites or internet services you visit that you do not wish to have personally identifiable information about your activities tracked by cookies or other persistent identifiers across time and across third-party Internet websites, online or cloud computing services, online applications, or mobile applications. These are commonly called “do not track” signals. Our [site/service/application] responds to such signals by [if the site, service, or application takes action in response to such signals, describe the action taken and explain the basis for it; if the site, service, or application is unable to take action, state so and explain why; if the site, service, or application is able to take action but does not take action, state so and explain why].
- 4.7 Disclosure of Third Party Collection of Personally Identifiable Information
- 4.7.1 Under 6 **Del.C.** §1205C(b)(6), an operator of a commercial site, service, or application is required to disclose in its privacy policy whether anyone other than the operator may collect personally identifiable information about a user’s online activities, over time and across different sites, services, and applications, when a user uses the operator’s site, service, or application.
- 4.7.2 An operator shall be deemed to have made the disclosure required by 6 **Del.C.** §1205C(b)(6) when the operator provides the following disclosure in its privacy policy:
We [do not allow/may allow] allow third parties to collect personally identifiable information about a user’s online activities, over time and across different sites, services, and applications, when that user uses our site, service, or application. [If “may allow,” the operator must describe the kinds of third parties who may be permitted to engage in such collection, the purpose for permitting such collection, and what those third parties may do with the information collected—such as, for example, collection of a user’s personally identifiable information by an advertising service for the purpose of directing targeted advertising to the user while using the operator’s or a third-party’s site, service, or application.]

5.0 Alternative Safe Harbor to Comply with the Content Requirements of 6 Del.C. §1205C(b)

An operator of a commercial site, service, or application shall be deemed to have made the disclosures required by 6 Del.C. §1205C(b) if the operator has a privacy policy that complies with the requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§22575–22579.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 788, 796 and 801 (7 Del.C. §§788, 796 & 801)
7 DE Admin. Code 3900

PUBLIC NOTICE**3900 Wildlife****1. TITLE OF THE REGULATION:**

3900 Wildlife - 4.0 Seasons; 3900 Wildlife - 23.0 Non-native/Invasive Wildlife

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The Department of Natural Resources & Environmental Control (DNREC) initiated the development of regulations pertaining to establish reporting requirements for gray fox taken, killed or captured; also to ensure consistency with and to clarify the allowable timeframe and methodology for reporting coyote and nutria harvests. Reporting requirements were presented to the public in proposed form (19 DE Reg. 176 (09/01/15)) and a public hearing on the matter was held September 22, 2015 at 6:30 PM in the DNREC Auditorium, Dover, DE. The hearing record was closed on October 7, 2015. Following careful consideration of the hearing record and in response to public input received during the regulatory process, which was largely in opposition of the proposal for a next business day harvest reporting requirement, the Division is proposing to adjust its previously proposed harvest reporting requirement to rather allow reporting gray fox harvest within seven (7) calendar days of harvest (i.e., reporting within a week).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§788, 796 and 801, Title 7 Delaware Code

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

No additional hearing will be held; the Department will receive written comment through February 1, 2016. Individuals may submit written comments regarding the proposed clarification to 7 DE Admin Code §3542 via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Rob Hossler Robert.Hossler@state.de.us (302) 739-9912

PROPOSED REGULATIONS

3900 Wildlife (Break in Continuity of Sections)

4.0 Seasons

(Penalty Section 7 **Del.C.** §103(d))

(Break in Continuity Within Section)

4.13 Red Fox and Gray Fox.

4.13.1 Red Fox Hunting Harvest Season. Red fox may be killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 2.8 of WR-2.0 and §788 of Title 7.

4.13.2 Red Fox Trapping Season. Red fox may be trapped with foothold, cable restraint, or cage/box traps from December 1 through March 10.

4.13.3 Gray Fox Harvest Reporting. All gray fox taken, killed or captured pursuant to §796 of Title 7 must be reported to the Division of Fish and Wildlife within seven (7) calendar days using its established reporting system(s).

(Break in Continuity of Sections)

23.0 Non-native/Invasive Wildlife

(Penalty Section 7 **Del.C.** §103(d))

23.1 Non-native Wildlife

23.1.1 Coyotes

(Break in Continuity Within Section)

23.1.1.5 Reporting Harvest. After harvesting a coyote, a hunter and/or trapper must report the harvest ~~via~~ to the Division of Fish and Wildlife's by the end of the next business day using its established reporting system(s).

23.2 Invasive Wildlife

23.2.1 Nutria (*Myocastor coypus*)

(Break in Continuity Within Section)

23.2.1.3 Anyone ~~capturing~~ harvesting a nutria must notify the Division of Fish & Wildlife ~~within 24 hours of the capture~~ by the end of the next business day using its established reporting system(s).

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3900 Wildlife

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 **Del.C.**, Ch. 60 and 63)
7 DE Admin. Code 1302

REGISTER NOTICE
SAN # 2015-06

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Hazardous Waste* (DRGHW)

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the characteristics of ignitability to mirror the federal requirements. Additionally, the proposed modifications will correct typographical and reference errors.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed amendments to DRGHW will be held on Thursday, January 21, 2016 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will be open January 1, 2016. Interested parties shall submit comments in writing by the end of the comment period, as designated by the hearing officer at this hearing and/or statements and testimony may be presented either orally or in writing at the January 21, 2016 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Melissa Ferree, Engineer III, Solid and Hazardous Waste Management Section - (302) 739-9403

1302 Regulations Governing Hazardous Waste

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strike throughs~~.

AMENDMENT 1:

Background:

Delaware proposes to modify DRGHW to mirror the federal provisions regarding characteristics of ignitability.

Section 261.21 Characteristics of Ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see §260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see §260.11).

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas ~~as defined in 49 CFR Part 173 and as determined by the test methods described in that regulation.~~

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70°F or, regardless of the pressure at 70°F, having an absolute pressure exceeding 104 p.s.i. at 130°F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100°F as determined by ASTM Test D-323.

PROPOSED REGULATIONS

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer as defined in 49 CFR Part 173. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in §261.23(a)(8), in which case it must be classed as an explosive.

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21.

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in §173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

AMENDMENT 2:

Background:

Delaware proposes to modify DRGHW to correct an incorrect reference. DRGHW § 262.21 is reserved, as Delaware has elected not to issue manifest numbers or print hazardous waste manifests. Rather, the approval for this function remains at the federal level.

Section 262.20 General Requirements.

(a) (1) ...

(2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, ~~262.24~~, 262.27, 262.32, 262.34, 262.54, 262.60, and the appendix to part 262 of these regulations, and 40 CFR § 262.21 shall not apply until

September 5, 2006. The manifest form and procedures in §§260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

AMENDMENT 3:

Background:

Delaware proposes to modify DRGHW to correct an incomplete reference.

Section 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

(a) (1) ...

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through N of Part 266 of these regulations, Subpart E of Part 263, and all applicable provisions in Parts 268, 122 and 124 of these regulations:

(i) Recyclable materials used in a manner constituting disposal (Part 266, Subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of these regulations (Part 266, Subpart H);

(iii) Recyclable materials from which precious metals are reclaimed (Part 266, Subpart F);

(iv) Spent lead-acid batteries that are being reclaimed (Part 266, Subpart G). Note: Spent lead-acid batteries destined for reclamation are not subject to the transporter permitting requirements of Part 263.

AMENDMENT 4:

Background:

Delaware proposes to modify DRGHW to change an incorrect preposition and mirror the federal regulations.

Section 264.151 Wording of Instruments.

...

(n)(1) ... STANDBY TRUST AGREEMENT

...

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund,... except that the Fund is not established for the benefit of third parties for the following:

...

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned ~~to~~ by [insert Grantor];

* * * * *

DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Sections 6003 and 6010 (7 Del.C. §§6003 & 6010)

REGISTER NOTICE: SAN #2009-30

7301 Regulations Governing the Construction and Use of Wells

1. TITLE OF THE REGULATIONS:

7301 Regulations Governing the Construction and Use of Wells

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The purpose of this action is to modernize the well construction regulations not modified since 1997 and streamline the process for addressing well construction and siting problems.

The Department held four (4) public workshops to obtain public input and discussion of the proposed changes to the well construction regulations. In addition, the Department participated in several committees both internal and external that reviewed and provided suggestions to changes to the regulations.

The major changes contained in this proposed regulation were the addition of new water well types, technology changes, incorporation of on-line permit application and related electronic options, aligning with related regulations (see item 5), clarification of special permit requirements such as for emergencies, updating regulatory language to meet several legislative bills regarding advertising and issuance of well permits within water service areas (Certificates of Public Convenience and Necessity), and incorporation of guidelines and policies to account for industry modernization and practices.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Sections 6003 and 6010

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

These proposed amendments will align better with other state regulations including the *Regulations Governing Public Drinking Water Systems*; *Regulations Governing the Allocation of Water*; *Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers*; *Regulations Governing Underground Injection Control*; and the *Regulations Governing the Design, Installation and Operation of On-site Wastewater Treatment and Disposal Systems*.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the *Regulations Governing the Construction and Use of Wells* will be open **January 1, 2016**. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on **February 1, 2016** beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Alan Pongratz
Alan.Pongratz@state.de.us
(302) 739-9944

Virgil R. Holmes, Director

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

7301 Regulations Governing the Construction and Use of Wells

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))
24 DE Admin. Code 2700

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to eliminate the continuing education ethics requirement. The Board will hold a public hearing on the proposed rule changes on January 21, 2016 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

2700 Board of Registration for Professional Land Surveyors (Break in Continuity of Sections)

10.0 Continuing Education

(Break in Continuity Within Section)

- 10.2 ~~A licensee shall complete at least two (2) hours on ethics and professionalism for each renewal period with no carry-over credit for any biennium renewal period. The required 2 hours on ethics and professionalism must be obtained by attending a live seminar and cannot be taken online.~~
- 10.32 Sources of Credit. In reviewing and approving applications for PDHs, the Board shall take into consideration:
- 10.32.1 Program Content: Courses must cover land surveying topics and must directly contribute to accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills and competence necessary to function in a manner that protects and serves the public interest. The knowledge or skills taught must enable licensees to better serve surveying clients and the subject matter must be directly related to the land surveying practice. All educational courses and their instructors, both live and online, must be approved by the Board except for those courses sponsored or offered by surveying societies located in any state or United States territory, including the District of Columbia. Courses that are sponsored or offered by surveying societies located in any state or United States territory, including the District of Columbia, will receive automatic approval and do not require Board review and approval.
- 10.32.2 Instruction: The course must be one that will be conducted by a qualified instructor. Instructors must submit a complete resume with the PDH course approval request.
- 10.32.3 Examples of acceptable topics include but are not limited to:
- ALTA/ACSM land title surveys
 - GPS (survey related)
 - GIS (survey related)
 - Delaware land use laws
 - Case law
 - Boundary laws and regulations
 - Research
 - Evidence
 - Boundary determination
 - Unwritten rights

Conflict resolution; i.e. boundary line agreements
 Adverse possession
 Highway surveys
 Railroad surveys
 Easements and rights of way
 Geodesy
 Highway design/Highway safety
 Surveyor in court/Expert testimony
 State and international boundaries
 Water boundaries
 Technical writing related to deed descriptions and survey reports
 Mathematics and computer applications of land surveying
 Measurement and analysis
 Photogrammetry and aerial photo interpretation
 Survey standards
 Survey instrumentation
 Business management and professional development related to the land surveying practice;
 i.e. surveying contracts, communicating with clients, good business planning and
 management, quality assurance
 Ethics and professionalism
 Liability for land surveyors
 Drainage design
 Sediment and erosion control
 First aid/CPR
 Subdivision Plans and planning
 Land Development Plans and planning
 Grading and Grading Development Plans
 Condominium Plans
 Roadway and Street Design and Planning
 Storm Water Drainage Plans
 Utility Plans and Easements

- 10.32.4 Serving as a member of a committee or a board or a commission, which has as its primary duty the preparation or grading of written tests which are given for the purpose of determining the proficiency of an applicant for registration, using accepted test development principles, shall be counted as one (1) PDH per hour of attendance.
- 10.32.5 Attendance at workshops or seminars, which are directly related to land surveying, shall count as one (1) PDH per actual hour of classroom attendance. Such sessions must be planned in advance, a record must be maintained describing the content and a record of attendance must be kept. This may include society meetings in which educational programs are presented.
- 10.32.6 The active teaching of land surveying at the college level, within the immediate preceding biennium, shall be counted as eight (8) PDHs per year. No more than sixteen (16) PDHs shall be issued for teaching at the college level in any renewal period. CREDIT WILL NOT BE GIVEN TO FULL TIME EDUCATORS.
- 10.32.7 Teaching a workshop or seminar, which is directly related to land surveying or professional development, shall be counted as two (2) PDHs per actual hour of teaching time, not to include preparation. No more than eighteen (18) PDHs may be claimed in any 2-year period. CREDIT WILL BE GIVEN FOR ONLY ONE PRESENTATION IN A TWO-YEAR PERIOD.

- 10.32.8 College level courses directly related to land surveying or professional development shall be counted as 40 PDH per credit hour. Ten (10) PDHs will be counted for each CEU (continuing education unit) earned.
- 10.32.9 Presentation and/or publication of a professional paper will be counted as 10 PDHs. No more than 20 PDHs may be claimed in any biennium renewal.
- 10.43 Renewal Credit.
- 10.43.1 Each licensee applying for renewal shall attest to satisfying the continuing education requirements outlined in Rule 10.1, ~~and 10.2, and 10.3~~ in the period defined in Section 10.1 of these rules.
- 10.43.2 Licensees should retain their PDH files and records for at least five (5) years.
- 10.54 Pro-Rated Credits for Renewal. A licensee for renewal shall follow the following schedule of reporting PDH credits:
- 10.54.1 If, at the time of renewal, you have been licensed for less than one year, NO continuing education is required.
- 10.54.2 If, at the time of renewal, you have been licensed for more than one year, but less than two years, half (12 PDHs) is required, including one ethics and professionalism PDH. A total of four (4) PDHs may be obtained by online courses. The required one ethics and professionalism PDH must be obtained by attending a live seminar and cannot be taken online.
- 10.54.3 If, at the time of renewal, you have been licensed for two or more years, the full amount (24 PDHs) is required, including two ethics and professionalism PDHs. A total of eight (8) PDHs may be obtained by online courses. The required two ethics and professionalism PDHs must be obtained by attending a live seminar and cannot be taken online.
- 10.65 Renewal. Any licensee who has submitted an electronic renewal form ~~as required in Section 10.4.1~~ and has met all other requirements shall be granted renewal.
- 10.76 Audit. Each biennium, the Division of Professional Regulation shall select from the list of renewed licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements.
- 10.87 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various PDHs claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the PDHs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's PDHs meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 10.98 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's certificate of registration shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of land surveying, pursuant to 24 **Del.C.** §2712. The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine.
- 10.409 Noncompliance – Extenuating Circumstances. A licensee may request an extension and be given up to an additional twelve (12) months to make up all outstanding required PDHs providing he/she can show good cause why he/she was unable to comply with such requirements and provided the statement is received and reviewed by the Board prior to the licensee renewing their license. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must be received and reviewed by the Board prior to

PROPOSED REGULATIONS

the licensee renewing their license. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required PDHs. A licensee who has successfully applied and received Board approval for an extension under this paragraph shall make up all outstanding hours of professional development within the extension period approved by the Board.

- 10.140 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.
- 10.121 A member of the active duty military, National Guard or the military reserve who is assigned to a duty station or deployed shall be deemed to have completed one hour of professional development for each month of active duty service.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

2930 COUNCIL ON REAL ESTATE APPRAISERS

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 Del.C. §4006(a)(1))
24 DE Admin. Code 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

Pursuant to 24 Del.C. §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the AQB criteria are amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on February 16, 2016 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board to Flora Peer at the above address in accordance with 29 Del.C. §10118(a).

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

2930 Council on Real Estate Appraisers

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

PUBLIC NOTICE

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 Del.C. §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and

provide more detailed information regarding the use of telehealth services for the provision of Mental Health Counseling, Chemical Dependency Counseling, or Marriage and Family Therapy.

The Board will hold a public hearing on the proposed rule change on January 27, 2016 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until February 11, 2016.

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals (Break in Continuity of Sections)

11.0 Telehealth Services

- 11.1 "Telehealth Services" means the practice of Mental Health Counseling, Chemical Dependency Counseling, or Marriage and Family Therapy (hereinafter referred to as Behavioral Health Practice) by distance communication technology such as but not necessarily limited to telephone, email, Internet-based communications, and videoconferencing.
- 11.2 In order to deliver Telehealth Services one must hold a current, valid license issued by the Board.
- 11.3 Licenseses understand that this rule does not provide licenseses with authority to deliver Telehealth Services to clients domiciled in any jurisdiction other than Delaware, and licenseses bear responsibility for complying with laws, rules, and/or policies for the delivery of Telehealth Services set forth by other jurisdictional regulatory boards.
- 11.4 Licenseses delivering Telehealth Services shall comply with all of the rules of professional conduct and state and federal statutes relevant to Behavioral Health Practice.
- 11.5 Licenseses must establish and maintain current competence in the professional practice of Telehealth Services through continuing education, consultation, or other procedures, in conformance with prevailing standards of scientific and professional knowledge. Licenseses must establish and maintain competence in the appropriate use of the information technologies utilized in the practice of Telehealth Services.
- 11.6 Licenseses must recognize that Telehealth Services are not appropriate for all Behavioral Health Practice and clients, and decisions regarding the appropriate use of Telehealth Services are made on a case-by-case basis. Licenseses delivering Telehealth Services are aware of additional risks incurred when engaging in Behavioral Health Practice through the use of distance communication technologies and take special care to conduct their professional practice in a manner that protects the welfare of the client and ensures that the client's welfare is paramount. Licenseses delivering Telehealth Services shall:
 - 11.6.1 Conduct a risk-benefit analysis and document findings specific to:
 - 11.6.1.1 Whether the client's presenting problems and apparent condition are consistent with the use of Telehealth Services to the client's benefit; and
 - 11.6.1.2 Whether the client has sufficient knowledge and skills in the use of the technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service.
 - 11.6.2 Not provide Telehealth Services to any person or persons when the outcome of the analysis required in subsections 11.6.1.1 and 11.6.1.2 of this rule is inconsistent with the delivery of Telehealth Services, whether related to clinical or technological issues.
 - 11.6.3 Upon initial and subsequent contacts with the client, make reasonable efforts to verify the identity of the client;
 - 11.6.4 Obtain alternative means of contacting the client;
 - 11.6.5 Provide to the client alternative means of contacting the licensee;
 - 11.6.6 Establish a written agreement relative to the client's access to face-to-face emergency services in the client's geographical area, in instances such as, but not necessarily limited to, the client experiencing a suicidal or homicidal crisis;

PROPOSED REGULATIONS

- 11.6.7 Whenever feasible, use secure communications with clients, such as encrypted text messages via email or secure websites and obtain and document consent for the use of non-secure communications;
- 11.6.8 Prior to providing Telehealth Services, obtain the written informed consent of the client, in language that is likely to be understood and consistent with accepted professional and legal requirements, relative to:
 - 11.6.8.1 The limitations and innovative nature of using distance technology in the provision of Behavioral Health Services;
 - 11.6.8.2 Potential risks to confidentiality of information due to the use of distance technology;
 - 11.6.8.3 Potential risks of sudden and unpredictable disruption of Telehealth Services and how an alternative means of re-establishing electronic or other connection will be used under such circumstances;
 - 11.6.8.4 When and how the licensee will respond to routine electronic messages;
 - 11.6.8.5 Under what circumstances the licensee and service recipient will use alternative means of communications under emergency circumstances;
 - 11.6.8.6 Who else may have access to communications between the client and the licensee;
 - 11.6.8.7 Specific methods for ensuring that a client's electronic communications are directed only to the licensee or supervisee;
 - 11.6.8.8 How the licensee stores electronic communications exchanged with the client;
- 11.6.9 Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data.
- 11.7 If in the context of a face-to-face professional relationship the following are exempt from this rule:
 - 11.7.1 Electronic communication used specific for appointment scheduling, billing, and/or the establishment of benefits and eligibility for services; and
 - 11.7.2 Telephone or other electronic communications made for the purpose of ensuring client welfare in accord with reasonable professional judgment.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 3001

PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO IMPLEMENT THE
PROVISIONS OF 26 *DEL. C. CH. 10* RELATING
TO THE CREATION OF A COMPETITIVE
MARKET FOR RETAIL ELECTRIC SUPPLY
SERVICE (OPENED APRIL 27, 1999; RE-
OPENED JANUARY 7, 2003; RE-OPENED
SEPTEMBER 22, 2009; RE-OPENED
SEPTEMBER 7, 2010; RE-OPENED JULY 17,
2012)

PSC REGULATION DOCKET NO. 49

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. Please file written comments either in the Commission's electronic filing system, "DelaFile", available at <https://delafile.delaware.gov/>, click Public Comment under the Public Link or send to the Commission's address listed below.

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Reg. Doc. 49

The Commission encourages the public to submit written comments on or before **February 1, 2016**, but the last date to submit written comments will be on **February 8, 2016**.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on **February 23, 2016 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8830 (December 15, 2015) (the "Order") and the proposed revised Supplier Rules in the January 2016 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <https://delafile.delaware.gov/>.

If you would like to review documents at the Commission's offices, please contact Ashley Lyon at ashley.lyon@state.de.us to arrange a time for your review. You may also review copies of these documents at the Wilmington office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 or the Dover office located at 29 S. State Street, Dover, DE

19901. Please call the Wilmington office at (302) 577-5077 or the Dover office at (302) 241-2555 to arrange for a time to review the documents at that location.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at http://sos.delaware.gov/foia_requests.shtml. The Commission will respond to your request in accordance with the provisions of the Freedom of Information Act, 29 **Del.C.** Ch. 100.

If you have a disability and wish to participate or to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to psc@state.de.us, include "Regulation Docket 49" in the subject.

ORDER NO. 8830

AND NOW, this 15th day of December 15, the Delaware Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, the Commission has promulgated certain regulations pertaining to certification of electric suppliers entitled "Rules for Certification and Regulation of Electric Suppliers." See 26 *Del. Admin. C.* §3001 (the "Supplier Rules"); and

WHEREAS, the Supplier Rules have been amended several times since their original passage in 1999. (PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011); and

WHEREAS, by Order No. 8187 dated July 17, 2012, the Commission re-opened PSC Regulation Docket 49 to consider further revisions to the existing Supplier Rules set for the in 26 *Del. Admin. C.* §3001; and

WHEREAS, by Order No. 8424 dated July 30, 2013 and Order No. 8424 dated April 15, 2014, the Commission authorized the publication in the *Delaware Register of Regulations* of the proposed amendments to the Supplier Rules; and

WHEREAS, the Commission received several comments on the proposed amendments; and

WHEREAS, the Commission now proposes to modify the Supplier Rules to reflect the comments received; and

WHEREAS, the Commission believes that the proposed revised regulation should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, for the reasons set forth in PSC Order No. 8187 and the body of this Order, the Commission proposes to revise the Supplier Rules as set forth herein in Exhibit "A".

2. That, pursuant to 29 **Del. C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the January 2016 *Delaware Register of Regulations* a copy of this Order; a copy of the Supplier Rules, showing the proposed changes (Exhibit "A"); a copy of the currently existing rules (Exhibit "B"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "C".

3. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "C" to be published in *The News Journal* and the *Delaware State News* newspapers on or before January 1, 2016. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all members of the workgroup formed in accordance with PSC Order No. 8187; (h) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before February 1, 2016. Pursuant to 29 *Del.C.* §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Rules on Tuesday, February 23, 2016 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on the nature and extent of any comments received regarding the

proposed revisions to the Supplier Rules, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

6. That pursuant to 26 **Del.C.** §1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** §114(b)(1).

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

K. F. Drexler, Commissioner

Mike Karia, Commissioner

ATTEST:

Donna Nickerson, Secretary

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

3001 Rules for Certification and Regulation of Electric Suppliers

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 **Delaware Code** §§2708 and 2709 (21 **Del.C.** §§2708 & 2709)
2 **DE Admin. Code** 2222

PUBLIC NOTICE

2222 School Bus Driver Qualifications and Endorsements

The Delaware Department of Transportation, Division of Motor Vehicles (the "DMV") hereby gives notice of intent to update the School Bus Driver Qualification and Endorsements regulation to meet Delaware State Law and Federal Regulation changes.

This proposal is pursuant to Senate Bill 39 with Senate Amendment 1 of the 147th General Assembly, which went into effect July 8, 2015. This Bill brought Delaware into compliance with the Federal Motor Carrier Safety Administration's commercial driver license and commercial learner permit issuance standards. This Bill added new definitions and commercial learner permit specifications to Delaware law. Other changes include limiting certain endorsements to the commercial learner permit and adding new restrictions to the commercial driver license.

Public Comment Period

The DMV will take written comments on these proposed revisions to Section 2222 of title 2, Delaware Administrative Code, from January 1, 2016 through January 31, 2016.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.

2222 School Bus Driver Qualifications and Endorsements

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §2708, 21 **Del.C.** §2709.

2.0 Purpose

- 2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on a Delaware commercial driver licenses.
- 2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the **Delaware Code**.

4.0 Definitions.

The following words and terms, when used in the regulation, should have the following meaning unless the context clearly states otherwise:

“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an “L”.

“Commercial Driver License (CDL)” means a driver license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“Commercial Learner Permit (CLP)” means a commercial learner permit issued pursuant to 21 **Del.C.** Chapter 26 Section 2608(d).

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or
- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

“P” Endorsement means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

~~**“Q” Endorsement** means an endorsement that authorizes a driver to transport passengers in only Class B and Class C commercial motor vehicles.~~

~~**“R” Endorsement** means an endorsement that authorizes a driver to transport passengers in only Class C commercial motor vehicles.~~

“**S**” Endorsement” means an endorsement that indicates the CLP/CDL holder meets the requirements of 21 Del.C. §2708 and this regulation and is authorized to operate a school bus. The CDL must also display a passenger (P, Q or R) endorsement to specify the class of commercial vehicle the driver may operate when transporting passengers. The CLP/CDL (S) endorsement must also be accompanied by a (P) endorsement and any necessary restrictions that may be applicable.

“**M**” Restriction” means a limitation that restricts the driver from operating any CMV Class A passenger vehicle.

“**N**” Restriction” means a limitation that restricts the driver from operating any CMV Class A and B passenger vehicle.

“**P**” Restriction” means a limitation that restricts the driver from operating any CMV with passengers.

“**Road Test**” means a 3 part skills test in a commercial motor vehicle that includes a vehicle pre-trip safety inspection evaluation, a vehicle skills maneuver evaluation, and an on-road driving skills evaluation.

“**School Bus**” as specified by 21 Del.C. §2603(29) means a commercial motor vehicle used to transport pre-primary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events, or any vehicle which meets the regulatory requirements adopted by the Department of Education with the advice of the Division of Motor Vehicles as specified under 14 Del.C. §2901. School Bus does not include a bus used as a common carrier.

“**Yellow Card**” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an (S) endorsement as specified in 21 Del.C. §2708(b)(3). The applicant will surrender the Yellow Card to the DMV when the applicant’s school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

5.0 Substance of Policy

5.1 Procedures.

5.1.1 Basic Requirements:

5.1.1.1 Basic. School bus drivers are required to have been issued and have in their possession, while driving a school bus, a CDL with an (S) endorsement, a ~~passenger (P)~~ endorsement (P, Q or R), any applicable restrictions, and a valid physical examination certification (Green Card).

5.1.1.2 Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.

5.1.1.2.1 Basic Training. For training and evaluation a driver may drive a school bus with a ~~CDL permit or a valid CDL with~~ valid CLP containing the proper passenger endorsements and applicable restrictions (P, Q or R S, M, N), but only when accompanied by a DOE Certified Delaware School Bus Driver Trainer (CDSBDT) or a DMV Examiner. In addition, for vehicle maneuvering skills training, a driver may drive a school bus with a ~~CDL permit or a valid CDL with~~ valid CLP containing the proper passenger endorsements and applicable restrictions (P, Q or R S, M, N) when accompanied by a driver with a valid CDL with an (S) endorsement and other ~~proper~~ applicable endorsements/restrictions.

5.1.1.2.2 45-Day Temporary (S) Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE 6 hours of on-bus training, the DMV may, upon specific written DOE request, issue a CDL license along with a one-time only temporary (S) endorsement for a period not to exceed 45 days. This temporary (S) endorsement allows the driver to carry students without a CDSBDT upon successful completion of the last 2 hours of DOE on-board training, if all other (S) endorsement requirements have been met. This temporary (S) endorsement is intended for the driver who, due to exceptional circumstances, has been unable to complete the DOE classroom training. This temporary (S) endorsement will only be issued one time and cannot be extended.

PROPOSED REGULATIONS

- 5.1.1.2.3 Temporary (S) Endorsement Conversion. The DMV will convert the temporary (S)-endorsed CDL to an (S)-endorsed CDL upon receipt of certification (Yellow Card) issued to the applicant by the district/school transportation supervisor (5.1.2.101 of this regulation) indicating that the required training has been completed. The DMV will forward the Yellow Cards to DOE.
- 5.1.2 Initial Issuance Requirements: All of the following requirements shall be met by all new and out-of-state transfer applicants for an (S) endorsement. Drivers must:
- 5.1.2.1 Be 18 years of age or older with at least one (1) year of valid driving experience.
- 5.1.2.2 Have a valid Delaware ~~CDL with a passenger (P, Q or R) endorsement~~ Class D driver license or CDL with a (P) endorsement.
- 5.1.2.3 Pass the applicable knowledge tests administered by the DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).
- 5.1.2.4 Obtain a Delaware CLP with (P) and (S) endorsements and M (or N) and P restrictions.
- 5.1.2.35 Complete a driver training course with specific course content as determined by 49 C.F.R. 383.123(a)(2) and DOE requirements as specified in 21 **Del.C.** §2708(b)(3).
- 5.1.2.4 ~~Pass the school bus knowledge test administered by the DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).~~
- 5.1.2.56 Pass a road test in a school bus administered by the DMV as required by 49 C.F.R.383.123 (a)(3). NOTE: Per 49 C.F.R. 383.25 (e), an applicant must hold a CLP for a minimum of 14 days before they are eligible to receive a road test by the DMV.
- 5.1.2.67 Not have more than five (5) points (full point value) on the applicant's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to (S) endorsement holders in meeting this requirement.
- 5.1.2.78 Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for the DMV to verify compliance with this section.
- 5.1.2.89 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 **Del.C.** §2708(b)(7).
- 5.1.2.89.1 Prior to being issued an (S) endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of Investigation criminal background check to verify that they are clear of any disqualifying crime as specified in 21 **Del.C.** §2708(b)(7) and to ensure applicants are qualified in accordance with 5.1.2.89 above.
- 5.1.2.89.2 Criminal background checks will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the criminal background check issuance recommendation, to the DMV.
- 5.1.2.89.3 Once the criminal background check is issued by the State Bureau of Identification for the purpose of obtaining an (S) endorsement, it is valid for a period of six months. An (S) endorsement applicant presenting an outdated criminal background check must apply for a new criminal background check and pay appropriate fees.
- 5.1.2.910 Have a valid physical examination certification (Green Card).
- 5.1.2.101 The applicant will be issued a School Bus Driver's Certificate (Yellow Card) by a district/school transportation supervisor as certification of DOE requirements being completed as specified in 21 **Del.C.** §2708(b)(3). The applicant will surrender the Yellow Card to the DMV when the applicant's (S) endorsement is issued. The DMV will forward the Yellow Cards to DOE.
- 5.1.2.142 Drivers transferring into Delaware with other jurisdiction school bus endorsed licenses will be required to meet all Delaware Initial Issuance Requirements (5.1.2 this regulation).
- 5.1.2.142.1 Transferring (S) endorsement holders shall provide a five year motor vehicle driving record from their previous jurisdiction or jurisdictions to the DMV. The DMV will

electronically check transferring (S) endorsement holders' motor vehicle records. If the electronic check is unable to be performed, transferring (S) endorsement holders will need to provide an official certified copy of their motor vehicle driving records to the DMV. The DMV will ensure these driving records meet the requirements in 5.1.2.67 and 5.1.2.78.

- 5.1.2.142.2 In accordance with 5.1.2.101, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.
 - 5.1.2.142.3 All transferring (S) endorsement holders will be required to pass a DMV-administered road test in a school bus per 5.1.2.56, regardless of past experience, training or qualifications.
 - 5.1.2.142.4 All transferring (S) endorsement holders will be required to pass a school bus knowledge test administered by the DMV per 5.1.2.43, regardless of past experience, training or qualifications.
 - 5.1.2.123 Any driver with an (S) endorsement that was issued the (S) endorsement in Delaware who has transferred his driver license out of Delaware and subsequently is attempting to transfer back into the State of Delaware may do so within 60 days of leaving the State without having to complete the requirements as outlined in 5.1.2 of this regulation.
- 5.1.3 Removal of School Bus Endorsements:
- 5.1.3.1 All (S) endorsement removals, except those under 5.1.3.89 below, will be approved by the Chief of Driver Services, the CDL Program Manager or the CDL Management Analyst.
 - 5.1.3.2 The (S) endorsement will be removed when driving privileges are withdrawn for any reason.
 - 5.1.3.3 The (S) endorsement will be removed when a driver's record exceeds eight (8) points (full point value) for moving violations on the driver's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to (S) endorsement holders in meeting this requirement.
 - 5.1.3.4 The (S) endorsement will be removed when the DMV is made aware of a conviction of a disqualifying crime as specified in 21 Del.C. §2708(b)(7).
 - 5.1.3.5 The (S) endorsement will be removed when the DMV receives in writing, a report from a physician that a driver is not medically qualified to operate a motor vehicle or a commercial motor vehicle as specified in 21 Del.C. §2733(a)(3).
 - 5.1.3.6 The (S) endorsement will be removed if a driver downgrades from a CDL to a Class D license.
 - 5.1.3.7 Any driver that has an (S) endorsement and is required to register as a sex offender with the DMV pursuant to 11 Del.C. §4120 and § 4121, shall have the (S) endorsement removed.
 - 5.1.3.8 The DMV will notify the (S) endorsement holder and the DOE, in writing, when an (S) endorsement is removed from a license including the reason for removal. This notification will entitle the (S) endorsement holder to request a DMV hearing and will also require the (S) endorsement holder to notify his employer when the endorsement is removed.
 - 5.1.3.9 The (S) endorsement will be removed when the DMV receives in writing, a notice from the DOE that a driver does not meet the requirements to retain the (S) endorsement.
- 5.1.4 School Bus Endorsement Reinstatement: An (S) endorsement, once removed, may be reinstated if all other DMV and DOE licensing requirements are met. If the (S) endorsement is withdrawn for one year or more, the driver will need to retake all DMV (S) endorsement testing requirements, pay appropriate fees, and provide DMV with a new School Bus Driver's Certificate (Yellow Card).
- 5.1.4.1 If the (S) endorsement was removed for points, the driver shall be eligible for reinstatement once the full point total on his three 3 year driving record falls to eight (8) points or below. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to school bus drivers in meeting this eligibility.

PROPOSED REGULATIONS

- 5.1.4.2 If the (S) endorsement was removed due to a suspension for a non-moving violation, the driver shall be eligible to reapply for the (S) endorsement upon the reinstatement of driving privileges given the period of suspension did not exceed one year.
- 5.1.4.3 If the (S) endorsement was removed due to a suspension, revocation or disqualification for moving violations, the driver shall be eligible to reapply for the (S) endorsement five (5) years from the date the suspension, revocation or disqualification has been cleared, as long as there are no further violations incurred affecting eligibility during this time period.
- 5.1.4.4 If the (S) endorsement was removed due to a medical reason, the driver may be eligible for reinstatement once approved by the DMV.
- 5.1.4.5 If the driver voluntarily downgrades from an (S) endorsed CDL to a Class D license and then the driver wishes to reinstate the (S) endorsed CDL, the driver will be required to meet the initial issue requirements in accordance with 5.1.2 of this regulation, ~~if~~ if the downgrade has been over one (1) year, ~~including providing~~ a new School Bus Driver's Certificate (Yellow Card) shall be required.
- 5.1.4.6 Any driver that has been convicted of a disqualifying crime as outlined in 21 **Del.C.** §2708(b)(7)(a-f) will never be eligible for an (S) endorsement or reinstatement regardless of the amount of time since the conviction.
- 5.1.4.7 After five (5) years has passed since the completion of all sentencing requirements resulting from the conviction of any other felony crime, other than those listed in 21 **Del.C.** §2708(b)(7)(a) through (f), and which have not been pardoned, then 21 **Del.C.** §2708(b)(7)(g) applies, and the driver must reapply as a new applicant for an (S) endorsement. The DMV may seek the guidance of the DOT Deputy Attorney General in these situations.
- 5.2 Driver's Status, Records and Record's Review: The following shall apply concerning the driving records and the status of all Delaware-licensed school bus drivers.
- 5.2.1 Upon a request from the DOE, a school district or a school bus contractor, the DMV shall provide a copy of a school bus driver's Delaware driving record free of charge. These agencies shall certify on DMV forms that they understand and will comply with the Delaware Privacy Act provisions as found in 21 **Del.C.** §305.
- 5.2.2 The DMV shall at any time review the driving records of all Delaware-licensed school bus drivers to ensure they continually meet school bus qualification requirements. This review is accomplished through a computerized search of records for violations, which may result in the removal of an (S) endorsement and notification to the driver and the DOE. Although not a prerequisite to a suspension, revocation or removal of an endorsement the DMV will attempt to send warning letters to (S) endorsement holders. Copies of such letters will be sent to the DOE, when an (S) endorsement holder's driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or the (S) endorsement.
- 5.2.3 Drivers moving to Delaware and requesting an (S) endorsement shall provide to the DMV a copy of their driving record(s) for the previous five (5) years from the driver's former state(s) of record. The DMV will electronically check the drivers' motor vehicle records. If the electronic check is unable to be performed, the driver will need to provide an official certified copy of his motor vehicle driving record to the DMV.

6.0 Severability

If any part of this regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions shall remain in full force and effect under Delaware law.

7.0 Effective Date

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the *Register of Regulations* in accordance with 29 **Del.C.** §10118(e) ~~or October 1, 2008, whichever is later.~~

DIVISION OF MOTOR VEHICLES

DRIVER SERVICES

Statutory Authority: 21 **Delaware Code** §§302, 2711, 2715 & 2718; 11 **Delaware Code** §§8593-8595 (21 **Del.C.** §§302, 2711, 2715 & 2718; 11 **Del.C.** §§8593-8595)

PUBLIC NOTICE

2225 Delaware Driving Privilege Permit and Driving Privilege Card

The Delaware Division of Motor Vehicles (DMV) gives notice of intent to create a new regulation Title 2 Transportation Regulation 2225 Delaware Driving Privilege Permit and Driving Privilege Card. This regulation pertains to the rules and regulations of the Delaware Driving Privilege Card created by Senate Bill 59 of the 148th General Assembly.

Public Comment Period

The DMV will take written comments on the proposed new Regulation 2225 of Title 2, Delaware Administrative Code, from January 1, 2016 through January 31, 2016.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.

2225 Delaware Driving Privilege Permit and Driving Privilege Card

1.0 Purpose

The authority to promulgate this regulation is 21 **Del.C.** §§302, 2711, 2715, and 2718 and 11 **Del.C.** §§8593, 8594, and 8595.

2.0 Authority

This administrative rule sets forth regulations and procedures used when issuing a Delaware Driving Privilege Permit or Card based on the referenced statutes listed in Section 1.0 of this regulation. The applicant has the option to obtain a Delaware Driving Privilege Permit or Card provided the applicant meets the minimum qualifications and standards presented in this regulation.

3.0 Definitions

"**Applicant**" means a prospective driving privilege card holder.

"**Birth Certificate**" means the record related to a birth that is permanently stored, either electronically or physically, at the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

"**Consular Identification Card**" means a card issued by a foreign government consulate that identifies citizens of their country who reside in a foreign country. It contains the cardholder's photo, address, birthplace, expiration date, and a unique identification number.

"**Division**" means the Delaware Division of Motor Vehicles.

"**Document Locator Code**" means a unique receipt number issued by the Division of Revenue to individuals who have requested copies of their filed Delaware tax returns.

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"Driving Privilege Card (DPC)" means a driving privilege permit or card issued pursuant to 21 Del.C. §2711(d) to undocumented immigrants who are not able to provide satisfactory documentary evidence of legal presence in the United States.

"Full Legal Name" means an individual's first name(s), middle name(s), and last name(s) or surname without the use of initials or nicknames unless otherwise acceptable in Section 5.0 of this document.

"ITIN" means a unique Individual Tax Identification Number issued by the Delaware Division of Revenue for the purposes of filing taxes.

"Legal Presence" means a citizen or national of the United States or an alien, lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has an application for asylum in the United States; has an application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for lawful permanent residence (LPR) or conditional permanent resident status.

"Material Change" means any change to the personally identifiable information of an individual as defined in Title 21 and this regulation. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

"Passport" means a passport booklet or card issued by the United States Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the United States Department of State.

"Personally Identifiable Information" means any information which can be used to distinguish or trace an individual's identity, such as the individual's name, driver license or identification card number, social security number, biometric record, including a digital photograph or signature, alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address whether it is stored in a database, on a driver license or on an identification card.

"Principal Residence Address" means the location where a person currently resides (i.e. presently resides even if at a temporary address) in conformance with the residency requirements of the state issuing the driver license or identification card, if such requirements exist.

"Receipt Number" means a number issued by the Delaware State Bureau of Identification for purposes of identifying a Driving Privilege Card applicant's criminal background check.

"SAVE" means the Department of Homeland Security's Systematic Alien Verification for Entitlements system or such successor or alternate verification system at the DHS secretary's discretion.

"Sexual Assault and Stalking" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing sexual assault and stalking.

"Source Document(s)" means original or certified copies (where applicable) of documents presented by an applicant as required under this regulation to the Division of Motor Vehicles to apply for driving privilege card.

"State Address Confidentiality Program" means any state-authorized or state-administered program that: (1) allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or (2) provides confidential recordkeeping regarding the addresses of such victims or other categories of persons.

"Verify" means procedures to ensure that the source document is genuine and has not been altered (i.e. "document authentication") and the identity data contained on the document is valid ("data verification").

4.0 Driving Privilege Permits/Cards

4.1 Application document.

4.1.1 Every application for a Delaware Driving Privilege Permit or Card (DPC) shall be made on an application furnished by the Delaware Department of Transportation. The original application shall be verified by the applicant before a person authorized by the division to administer oaths. Employees who are specifically trained and assigned duties to issue state documents are hereby designated as being able to administer oaths under this section. The applicant will certify on the application if he holds a driver license or identification card in this or any other state. The original application will be electronically scanned and stored.

4.2 Driving Privilege Permits/Cards.

4.2.1 Unless otherwise specified, DPC's issued in accordance with this regulation shall be considered valid Class D driver permit(s) and license(s) and shall be accepted by Delaware legal systems and agencies as proof of valid driving authority.

4.2.1.1 To be considered eligible for a Delaware DPC, the division must verify, scan, and electronically retain all original source documents.

4.2.1.2 Unless otherwise specified, once verified, scanned, and electronically retained, a DPC holder will not be required to again present the division with the original source document except in cases where a material change occurs or when an applicant's lawful status has changed.

4.2.2 It will be clearly indicated on the face of the driving privilege permit or card and in the machine readable zone that the permit or card is for "Driving Privilege Only" and "Not Valid for Identification."

4.2.3 The division may issue a DPC to persons who:

4.2.3.1 Are unable to provide satisfactory proof of legal presence in the United States;

4.2.3.2 Have a valid foreign passport or valid consular identification card issued by his or her home country;

4.2.3.3 Have been fingerprinted by the Delaware State Bureau of Identification;

4.2.3.4 Have filed, or have resided in Delaware and have been claimed as a dependent by an individual who has filed, Delaware income taxes in the two preceding years of the application;

4.2.3.5 May be ineligible for a Social Security Number (SSN) because of his or her immigration status;

4.2.3.6 Are able to provide proof of principal residence address in this State;

4.3 Renewal of Delaware Driving Privilege Permits/Cards.

4.3.1 Delaware Driving Privilege Permits may be renewed one time in person, before initial expiration, for a period of 6 months.

4.3.2 Delaware Driving Privilege Cards shall be renewed in person every four years and in accordance with 21 Del.C., §2715.

4.3.3 Remote renewal of the Delaware DPC is not permissible.

4.4 Reissued Delaware Driving Privilege Permits/Cards.

4.4.1 The Delaware DPC will be reissued in accordance with 21 Del.C., §2720.

4.4.2 The Delaware DPC must be reissued in person.

5.0 Name, Date of Birth and Gender

5.1 Full Legal Name, Date of Birth and Gender.

5.1.1 The name and date of birth on the face of the Delaware DPC must be the same as the name and date of birth on the source document presented by the applicant to establish identity. When the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, FNU, LNU and NA shall not be used.

PROPOSED REGULATIONS

5.1.2 If the names, as listed on various source documents (to substantiate the applicant's name, date of birth, gender, ITIN), are different, the applicant must contact the agency who issued the source document and change the name so that the names on all source documents match.

5.2 Name, Date of Birth and Gender Source Documents

5.2.1 To establish an applicant's full legal name, date of birth, and gender, the applicant must present one or more of the following source documents:

5.2.1.1 Valid, unexpired foreign passport;

5.2.1.2 Valid Consular Identification Card;

5.2.2 Applicants under age 18 must present a valid birth certificate containing birth parents name(s) that was issued by an Office of Vital Statistics or equivalent agency in the individual's country of birth, in addition to a document listed in subsection 5.2.1.

5.3 Name change/exceptions.

5.3.1 If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.

5.3.2 The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.

5.3.3 Exceptions to name change procedures must be approved by the Driver Services Manager, Chief of Driver Services, Deputy Director or Director.

5.4 Date of Birth Changes. To establish the applicant's date of birth, an individual must present at least one document included in subsection 5.2 or a court order that establishes a new date of birth.

5.5 Gender/gender changes. To change a person's gender, the applicant must complete the Request for Gender Change form detailing his or her request to have the gender designation on his or her driving privilege card changed. The form requires the applicant's medical or social service provider to certify that, in his or her professional opinion, what the applicant's true gender identity is. The medical or social service provider's practice must treat patients, including the applicant, seeking gender identity changes.

5.6 Foreign Documents. A professional translator must translate any documents that are in a foreign language into English.

6.0 Fingerprinting

6.1 All Delaware DPC applicants must be fingerprinted by the Delaware State Bureau of Identification (SBI). An applicant's criminal background check verification will be determined in accordance with 11 Del.C., §8595.

6.2 The division shall electronically verify that the DPC applicant has successfully completed the criminal background check with SBI.

7.0 Individualized Tax Identification Number (ITIN)

7.1 Every DPC applicant must present proof of the immediate two preceding years of filed Delaware Income Tax.

7.1.1 A Certificate of Filing Compliance containing a Document Locator Code Number (DLN) shall be issued by the Delaware Division of Revenue to each eligible applicant.

7.2 The division shall verify the ITIN and DLN with the Division of Revenue via electronic web service or phone call.

7.3 ITIN Exception:

7.3.1 The division, using the claimants ITIN and DLN, will verify with the Division of Revenue, dependents that have been claimed by an individual who has filed a Delaware income tax return.

8.0 Social Security Number (SSN), If applicable

8.1 Applicants who may have obtained a Social Security Number while under a legal presence status must present proof of SSN. The SSN will be electronically verified using the Social Security On-Line Verification (SSOLV) system, and the source document will be electronically stored.

8.2 SSN Disclosure Statement:

8.2.1 Disclosure of the applicant's SSN is mandatory. Federal and state laws authorize such disclosure (see Public Law 109-13, and 21 Del.C., §§2718(a) and 3104(a)). The division will use SSNs solely for the administration of the DPC program to ensure accurate identification. SSNs will not be released to businesses or private individuals but may be released to state agencies to carry out their governmental functions. If you obtained an identification document without a SSN and have subsequently obtained a SSN, it is your responsibility to notify the Division of Motor Vehicles within 30 days.

9.0 Principal Residence Address

9.1 The division and Delaware State Police must be able to contact every DPC holder at the physical location where he/she lives in this State. Therefore, every applicant must provide two documents that show the individual's name and principal Delaware residence using such documents as utility bills, auto or life insurance policies, bank account records, credit card statements, employment records, signed contract to purchase home in this State, rental agreement or any other document specifically approved by the Chief of Driver Services or Director. These source documents will be electronically stored and when possible, verified. The applicant should notify the division within 30 days after he changes his address. No proof is needed to change a person's address, and it can be accomplished by mail. A Delaware DPC will not be issued to an applicant unless the applicant has established a principal residence address in this State at the time of application.

9.2 Principal Address Exceptions.

9.2.1 Homeless - Temporary Lodging.

9.2.1.1 After meeting all other requirements, persons living in temporary lodging such as a homeless shelter or motel may be issued a Delaware Driving Privilege Permit or Card provided they substantiate: (1) they are living in temporary quarters in this State pending their subsequent move into a designated principal residence address; and (2) the agency offering temporary lodging certifies they are allowed residency for 30 or more days, and they may receive mail at this address.

9.2.2 Those Living on Boats or in Recreational Vehicles.

9.2.2.1 Those applicants whose principal residence address is on a personally-owned boat and who do not have another residency in this or any other state must provide proof that the boat is registered in their name in this State; have a 12-month or longer boat slip contract with a Delaware company; and provide a valid mailing address.

9.2.2.2 Those persons whose principal residence address is in a recreational vehicle on land in this State and who do not have a residency in this or any other state must provide proof that they have a 12-month or longer contract with a recognized Delaware RV campground or trailer court, or reside at the Dover Air Force Base RV campground, and have a valid mailing address.

9.2.3 Mailing Address.

9.2.3.1 If mail cannot be delivered to the applicant's principal residence address or if he or she is living in temporary quarters without mail service, he or she must provide the division with a mailing address. Those under the confidential address program must submit a mailing address.

9.3 Confidentiality program.

9.3.1 Victims of domestic violence, dating violence, sexual assault, stalking, or other forms of abuse may use an alternative address under the State's Victims of Abuse Address Confidentiality Program. The Victims of Abuse Address Confidentiality Program will follow the guidelines

PROPOSED REGULATIONS

established under the memorandum of agreement between Delaware's Department of Justice, Department of Transportation and Division of Motor Vehicles.

10.0 Verification Requirements and Other Restrictions/Limitations

10.1 Verification of Source Documents.

10.1.1 The division will verify the source documents used to determine an applicant's name, date of birth, SBI check, ITIN, SSN (if applicable), principal residence address, gender or any material changes to this data with the issuer of the source document whenever. An electronic validation of the document and identity data will occur as systems become available or by alternative methods approved by the DHS. All source documents and identification document applications will be scanned and electronically retained by the division.

10.1.2 The division will electronically verify information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

10.2 Electronic Verification Details.

10.2.1 Any documents listed in subsection 5.2 will be scanned and verified through division scanners. If two documents are shown, only one must be verified. In the event of a non-match, the division must not issue a Delaware DPC to an applicant and must refer the individual to their Consulate for resolution. The division will not issue a Delaware DPC to an applicant if their document is invalid.

10.2.2 State Bureau of Identification (SBI). The division will verify all DPC applicants' fingerprint process with the SBI using the receipt number issued to the applicant by the SBI. This verification will ensure that the applicant appearing at the division is the same applicant who was fingerprinted at SBI.

10.2.3 Division of Revenue. The division will verify all DPC applicants two preceding years of filed Delaware income tax using the DLN on the Certificate of Filing Compliance issued by the Division of Revenue. The division, using the claimants ITIN and DLN, will verify with the Division of Revenue, dependents that have been claimed by an individual who has filed a Delaware income tax return. The division may establish procedures and exceptions through memorandums.

10.2.4 Social Security On-Line Verification (SSOLV). If applicable, the division will verify SSNs with the Social Security Administration (SSA) using SSOLV or through another method approved by the DHS. In the event of a non-match with the SSA, the division will use existing procedures to resolve non-matches. If unable to resolve non-matches, the division will deny issuance to those applying for their first Delaware identification document. A Delaware compliant or non-compliant identification document will not be issued until the mismatch condition is resolved. However, upon renewal of a Delaware-issued identification document, the document holder may be issued one 60-day temporary non-compliant identification document to give him time to resolve the mismatch condition with the SSA. The division may establish procedures and exceptions through memorandums.

10.2.5 Commercial Driver License Information Systems (CDLIS). Mandated by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, the division will verify all DPC transactions through CDLIS to ensure the applicant does not hold a commercial motor vehicle compliant or non-compliant identification document in another jurisdiction. If a match is found in another jurisdiction, the applicant must surrender his or her existing identification document from the other jurisdiction to obtain a Delaware DPC document.

10.2.6 Problem Driver Pointer System (PDPS). In conjunction with the National Driver Registry (NDR), the division will verify all DPC transactions through PDPS to ensure the applicant's eligibility to obtain valid driving authority and carry a DPC document. If a match is found from another jurisdiction with a status of "not eligible" during an initial transaction, the applicant is denied a Delaware DPC document until the jurisdiction reports a status of "eligible". During a DPC document change, duplicate or renewal process, if a "not eligible" status is found, the applicant is issued a 60-day temporary DPC document until the status becomes "eligible". At that time the applicant may be reissued his or her Delaware DPC.

10.3 Non-Match Verification Results and System Failure Procedures.

- 10.3.1 Initial Issue and Transfer. The division will deny the initial issuance of a Delaware DPC document whenever a verification check (SBI, Division of Revenue, CDLIS, PDPS, and SSN if applicable) results in a non-match or non-eligible condition.
- 10.3.2 Renewal - Mismatch Condition. Should a mismatch condition occur for those applicants renewing a Delaware DPC, they may be issued a 60-day temporary non-compliant DPC document to give him or her time to resolve the problem with the issuing agency.
- 10.4 Renewal and Verification System Failure.
- 10.4.1 If a verification system fails when the applicant is applying for his initial Delaware DPC, the application will be denied until the verification check is completed.
- 10.4.2 If an electronic verification system fails when an applicant is renewing his or her Delaware DPC, the following may occur depending on which verification system failed:
- 10.4.2.1 The applicant may be denied issuance;
- 10.4.2.2 The applicant may be issued a 60-day temporary DPC document;
- 10.4.3 Regardless of the above procedures, no DPC documents will be issued if there is reason to believe the applicant is attempting to commit fraud by presenting altered or fraudulent source documents or by finding non-matching or inconsistent data on various electronic databases, or by other factors that would lead a reasonable person to conclude the applicant is attempting to commit fraud. In such instances, an electronic record will be established, a digital photograph will be captured, the record will be annotated as denied, and fraudulent or altered documents will be confiscated. A division investigator or a law enforcement officer will be asked to investigate to determine future action.
- 10.5 Prohibition Against Holding More Than One Delaware Driving Privilege Card
- 10.5.1 The division will ensure the applicant does not have more than one valid document granting driving authority issued in this or any other state, thereby supporting the one driver license, one driving record concept as expressed in the Driver License Agreement. If a person holds a document granting driving authority in another state, he or she will not be issued a Delaware DPC in this State until the individual or division has terminated the driving document issued by another state.
- 10.5.2 Problem Driver Pointer System (PDPS), Commercial Driver License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS) and other national systems may be used to electronically verify, within the limits of each network, whether or not an applicant has a valid driving document in another state.
- 10.5.3 Motor Vehicle System software performs name, date of birth, SBI, ITIN and social security (if applicable) cross checks to identify persons who are mistakenly assigned multiple driving or identification card records on the division's files. Multiple records will be combined into one record when discovered.
- 10.5.4 An applicant's name and date of birth will be verified each time a Delaware DPC is renewed or reissued to ensure that the individual receiving a Delaware DPC is the same individual to whom the document was originally issued.
- 10.5.5 An applicant must be denied a Delaware DPC until the driving document issued by another state is terminated or soon to be terminated. If the applicant must terminate driving document issued by another state, then the division, as allowed under the Driver License Compact, may act on behalf of the applicant and inform that state that Delaware has issued a Delaware DPC in this State and request the other state cancel the one issued by its agency. A Delaware DPC may be issued pending the termination of the out-of-state document.
- 10.6 Other Restrictions/Limitations.
- 10.6.1 If the division discovers a person holds a driving document in multiple or different names issued by this or any other state, the division may deny issuance of the DPC, investigate the matter and suspend the applicant pursuant to Title 21, Section 2733(a)(5).
- 10.6.2 An applicant cannot obtain his initial Delaware DPC if his or her driving authority is suspended or revoked in any state for a violation that would result in a suspension or revocation in this State.

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Renewal exception: Those applicants renewing a valid Delaware DPC may be issued a 60-day, temporary DPC document to give them an opportunity to resolve the out-of-state suspension or revocation. Once the out-of-state suspension or revocation is cleared, the applicant may be issued a valid DPC.

11.0 Other Mandatory Data Collection and Source Documents Retention

11.1 Digital photograph images

- 11.1.1 A DPC shall not be valid unless it contains the applicant's full facial image and signature. The mandatory facial image must be captured and retained even if no DPC document is issued. The applicant for an initial Delaware DPC document must appear in person to update his full facial digital image.
- 11.1.2 The digital photograph must be full faced and provide an unobstructed view of the person's facial features. This enables the photograph on the license to be used as a means of proper identification for motor vehicle, emergency and public safety purposes. For more specific details consult current Division photograph image procedures. Digital imaging driver license facial recognition one-to-many technology compares each digital photograph taken against all other digital photographs on file to ensure the DPC applicant does not have multiple documents in different or same names on file in this State. One-to-many facial comparisons will be conducted on all initial issuance and transfers of driving authority documents. This same technology completes a one-to-one verification check by comparing the latest digital photograph taken against all other photographs on an applicant's current record. One-to-one facial comparisons will be conducted on all DPC renewals. This is designed to prevent a digital photograph from appearing on another person's identification document. Whenever the facial recognition technology pinpoints potential duplication, fraud or mistaken assignment of a photo, the applicant will not be issued a DPC document until the discrepancy is resolved.
- 11.1.3 A new digital photo image will be made every time a person appears in person to renew his DPC document, have his DPC document reissued, materially changed, or have his address changed on his DPC document.
- 11.1.4 If the division issues a DPC document without a photo image or one that does not meet division standards, the customer will be notified in writing that he must return to a division facility within seven days to replace the deficient document. If he fails to comply, his DPC document status will be changed to "denied", and the driver will be notified of the change. DPC document holders will be denied renewal or reissued documents until the photo image meets division standards.

11.2 Signature

- 11.2.1 Every holder of a DPC document shall sign an application under the penalty of perjury that the information on the application is true and correct. The applicant will use his or her normal signature. The identification document shall not be valid until signed by the applicant. By signing the application he acknowledges the following and any other information that may be included on the application in the future:
- 11.2.2 He or she is a bona fide resident of Delaware;
- 11.2.3 Consent to chemical tests of his breath, blood or urine to determine the amount of alcohol or drugs in his blood;
- 11.2.4 That convicted sex offenders must register with the Delaware State Police within seven days after coming into this State (Megan's Law);
- 11.2.5 That the division will send personal information pertaining to male applicants under the age of 26 years to the Selective Service for the purpose of registration in the Selective Service System as required by federal and state laws;
- 11.2.6 That he or she is physically and mentally able to safely operate a motor vehicle;
- 11.2.7 That he or she must report if he or she holds a license in another state or if his or her driving privileges are suspended or revoked in any state.

11.3 Retaining Source Documents.

11.3.1 The source documents submitted by the applicant to the division are used to determine the person's name, date of birth, gender, SBI fingerprints, ITIN, SSN (if eligible), address of principal residence, unless enrolled in a state address confidentiality program, and lawful status and shall be retained by the division in either paper or electronic format. The DPC document application signed by the applicant will also be retained.

11.4 Miscellaneous.

11.4.1 For identification purposes, the division will also collect the applicant's height, weight, and eye color based upon verbal information provided by the applicant.

12.0 Source Document Retention Period

12.1 At a minimum the division will retain the following documents including copies of the application, declarations, source documents and documents used to establish all names recorded by the division. The division will protect any personally identifiable information collected. The division may retain these documents for a longer time period than the period specified in the following:

12.1.1 The full facial image/photograph will be retained by the Department of Transportation for at least five years if no DPC document is issued and at least two years beyond the expiration date of the DPC document;

12.1.2 All paper copies of source documents must be retained for a minimum of seven years;

12.1.3 Microfiche documents must be retained for a minimum of ten years;

12.1.4 Digital images of source documents must be retained for a minimum of ten years;

12.1.5 Digital, microfiche and paper identification document applications and declarations will be retained for a minimum of ten years;

12.1.6 All photograph images must be stored and be retrievable by the division if properly requested by statute or regulation.

13.0 Division Databases

13.1 The Division must maintain a motor vehicle database that contains, at a minimum:

13.1.1 All data fields printed on identification documents issued by this State, individual serial numbers of the documents and ITINs;

13.1.2 A record of the full legal name and recorded name, as applicable, without truncation;

13.1.3 All additional data fields included in the machine readable zone (MRZ) but not printed on the DPC document; and

13.1.4 Motor vehicle driver histories, including motor vehicle violations, revocations, disqualifications, suspensions, and points on driver licenses and DPC's.

13.1.5 The division must protect the security of personally identifiable information as prescribed in State law and information technology policies and procedures.

14.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by the court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

15.0 Effective Date

This regulation shall be effective ten days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 Del.C., §10118(e). Delaware Driving Privilege Permits and Cards will become available beginning December 27, 2015.

PROPOSED REGULATIONS

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 131, 132 and 143; 26 Delaware Code, Chapters 9, 11 and 13 (17 **Del.C.** §§131, 132 & 143; 26 **Del.C.** Chs. 9, 11 & 13)

PUBLIC NOTICE

2401 Utilities Manual Regulations

Under Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted a Utilities Manual. The Department has now drafted revisions to the Utilities Manual. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Utilities Manual from January 1, 2016 through January 31, 2016. Copies of the Draft DelDOT Utilities Manual Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be supplied in writing to: Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions, Delaware Department of Transportation P.O. Box 778 Dover, DE 19903 (302) 760-2515 (telephone) (302) 739-8282 (fax) eric.cimo@state.de.us.

A summary of the proposed changes is available at:

<http://regulations.delaware.gov/register/january2016/proposed/UtilityManualRevisionExplanationTable.pdf>

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

2401 Utilities Manual Regulations

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)
1 DE Admin. Code 501

ORDER

501 Regulations of the Delaware Solid Waste Authority

Delaware Solid Waste Authority
Resolutions of the Board of Directors
December 3, 2015

WHEREAS, the Delaware Solid Waste Authority (the "Authority") is a body corporate and politic constituting a public instrumentality of the State of Delaware duly established and organized under Chapter 64 of Title 7 of the **Delaware Code**, as amended (the "Act"); and

WHEREAS, under the Act, the Authority is charged with comprehensive responsibility for management and disposal of Delaware solid waste statewide; and

WHEREAS, in discharging its responsibilities, the Authority operates and maintains three state of the art landfills and three modern solid waste transfer stations; and

WHEREAS, under the Act, the Authority is charged with developing and implementing statewide recycling programs and resource recovery programs intended to maximize the recovery of usable materials from Delaware waste; and

WHEREAS, in furtherance of this recycling and resource recovery mission, the Authority has implemented a drop off single stream recycling program and has established the Delaware Recycling Center at Pigeon Point in New Castle County; and

WHEREAS, the Authority also manages special recycling and disposal programs, such as yard waste mulching and composting and household hazardous waste collections; and

WHEREAS, the Authority is engaged in community outreach programs at multiple events annually throughout

the State; and

WHEREAS, the foregoing operations and programs are projected to result in expenditures in excess of \$45 million annually; and

WHEREAS, the Authority has projected capital expense requirements in future years in the range of an additional \$7 to \$11 million annually; and

WHEREAS, from time to time the Authority issues high quality revenue bonds, the debt service on which is expected to be \$11 million for fiscal year 2016; and

WHEREAS, the Authority's primary source of revenue to support these expenses and debt service is tipping fees paid on the disposal of waste at the Authority's facilities; and

WHEREAS, a stable and reliable source of revenue in future years is critical to the continuation of the Authority's operations and programs, and the servicing of its debt; and

WHEREAS, the Authority is empowered by statute to require that all solid waste generated in Delaware be disposed of at Authority facilities; and

WHEREAS, ensuring that all Delaware solid waste is disposed of at Authority facilities will assure a consistent stream of revenue from year to year; and

WHEREAS, ensuring the delivery of Delaware solid waste to the Authority will also help ensure that Delaware solid waste is disposed of in properly designed landfills; and

WHEREAS, ensuring delivery of Delaware solid waste to the Authority will help ensure that hazardous wastes are not improperly disposed of; and

WHEREAS, ensuring the delivery of Delaware solid waste to Authority landfills will allow the Authority to better evaluate and understand the volume and composition of solid waste generated in Delaware, which understanding is needed in order for the Authority to update and keep current the Statewide Solid Waste Management Plan; and

WHEREAS, on October 1, 2015, the Authority proposed amendments to its Regulations that would require most Delaware solid waste to go to a DSWA designated facility, subject to limited exceptions; and

WHEREAS, the proposed amendments to the Regulations would also impose limitations on the types of vehicles licensees may utilize, and also would impose reporting requirements in respect of the delivery of Delaware generated recyclables to out of state facilities; and

WHEREAS, a public hearing was held on November 2, 2015 on these proposed amendments; and

WHEREAS, the Authority's hearing officer, James D. Nutter, has issued his Proposed Order and Recommendations on the matter, and has recommended adoption of the amendments to the Regulations with just one non-substantive change from the form of amendments proposed by the Authority; and

WHEREAS, the Authority's management has recommended that the Board of Directors adopt the amendments with the single non-substantive change proposed by the Authority's hearing officer; and

WHEREAS, the Board of Directors of the Authority has considered the recommendations of management and has reviewed the hearing officer's Proposed Order and Recommendations, as well as the transcript of the hearing, and all documents admitted into evidence.

NOW THEREFORE, be it:

RESOLVED, that the Board of Directors of the Delaware Solid Waste Authority adopts the amendments to the Regulations of the Delaware Solid Waste Authority with just one non-substantive change from the form proposed by the Authority on October 1, 2015, and in furtherance thereof shall execute a Final Order accomplishing same.

FURTHER RESOLVED, that management of the Delaware Solid Waste Authority shall take all steps necessary to ensure that the Final Order is published in the Delaware *Register of Regulations* and that the amendments to the Regulations of the Delaware Solid Waste Authority become effective on July 1, 2016.

So adopted this 3rd day of December, 2015

FINAL ORDER AND DECISION

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on proposed amendments to the Regulations (the "Regulations") of the DSWA.

2. On October 1, 2015, the Delaware Solid Waste Authority caused to be published, in the Delaware *Register of Regulations*, notice of proposed amendments to the Regulations. The proposed amendments to the Regulations

were also the subject of publication on the DSWA website as well as in the *Delaware News Journal* and the *Delaware State News* on October 1 and 4, 2015, and.

3. In accordance with 7 **Del.C.** §6403(i) and 29 **Del.C.** §10117, on Wednesday November 2, 2015 a hearing was held before James D. Nutter, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony were received into evidence. Public comment was also received.

4. The Authority issues this Final Order and Decision after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated December 1, 2015.

Summary of Evidence, Findings of Fact and Conclusions of Law

5. The summary of evidence set forth in the hearing officer's Proposed Order and Recommendations accurately summarizes the documentary evidence and verbal testimony received into the record.

6. The findings of fact and conclusions of law in the Proposed Order and Recommendations appear well reasoned and amply supported by the summary of the evidence contained therein.

7. Accordingly, the summary of the evidence, findings of fact and conclusions of law set forth in the Proposed Order and Recommendations are incorporated by reference and adopted herein in their entirety as if fully set forth herein.

The Hearing Officer's Report can be viewed at the following link:

(<http://regulations.delaware.gov/register/january2016/final/HearingOfficersReportReg501.pdf>)

Decision

8. For the reasons set forth above, the Regulations of the Delaware Solid Waste Authority are amended in the form set forth in Exhibit A hereto.

SO ORDERED, this 3rd Day of December, 2015.

Gerard L. Esposito, Chairman

Ronald G. McCabe, Vice Chair

Norman D. Griffiths

Michael R. Paraskewich, Jr., Ph.D., P.E.

Tonda L. Parks (absent)

Timothy P. Sheldon

501 Regulations of the Delaware Solid Waste Authority (Break in Continuity of Sections)

8.0 Recycling

(Break in Continuity Within Section)

8.3 The collection and transportation of recyclable materials shall be subject to the requirements of subsections 8.3.1 through 8.3.3 below:

(Break in Continuity Within Section)

8.3.4 All Licensees that have transported Recyclable Materials during the course of any calendar year shall report on a form substantially similar to Attachment F, no later than March 1 of the following year, the tonnage of recyclables delivered to each non-DSWA facility during such year and the average rate of recovery from Recyclables at each such facility for such year, ~~certified by an authorized person on behalf of such facility~~. The annual report shall contain a certification from the Licensee that to the best of the Licensee's knowledge, the materials recovered from Recyclables delivered to such facility were sold or delivered into the market for recovered materials and were not landfilled.

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 226 (19 DE Reg. 226). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

501 Regulations of the Delaware Solid Waste Authority

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)
1 DE Admin. Code 502

ORDER**502 Statewide Solid Waste Management Plan**

**Delaware Solid Waste Authority
Resolutions of the Board of Directors
December 3, 2015**

WHEREAS, the Delaware Solid Waste Authority (the "Authority") is a body corporate and politic constituting a public instrumentality of the State of Delaware duly established and organized under Chapter 64 of Title 7 of the Delaware Code, as amended (the "Act"); and

WHEREAS, under the Act, the Authority is charged with comprehensive responsibility for management and disposal of Delaware solid waste statewide; and

WHEREAS, in discharging its responsibilities, the Authority operates and maintains three state of the art landfills and three modern solid waste transfer stations; and

WHEREAS, under the Act, the Authority is charged with developing and implementing state wide recycling programs and resource recovery programs intended to maximize the recovery of usable materials from Delaware waste; and

WHEREAS, in furtherance of this recycling and resource recovery mission, the Authority has implemented a drop off single stream recycling program and has established the Delaware Recycling Center at Pigeon Point in New Castle County; and

WHEREAS, the Authority also manages special recycling and disposal programs, such as yard waste mulching and composting and household hazardous waste collections; and

WHEREAS, the Authority is engaged in community outreach programs at multiple events annually throughout the State; and

WHEREAS, the foregoing operations and programs are projected to result in expenditures in excess of \$45 million annually; and

WHEREAS, the Authority has projected capital expense requirements in future years in the range of an additional \$7 to \$11 million annually; and

WHEREAS, from time to time the Authority issues high quality revenue bonds, the debt service on which is expected to be \$11 million for fiscal year 2016; and

WHEREAS, the Authority's primary source of revenue to support these expenses and debt service is tipping fees paid on the disposal of waste at the Authority's facilities; and

WHEREAS, a stable and reliable source of revenue in future years is critical to the continuation of the Authority's operations and programs, and the servicing of its debt; and

WHEREAS, the Authority is empowered by statute to require that all solid waste generated in Delaware be disposed of at Authority facilities; and

WHEREAS, ensuring that all Delaware solid waste is disposed of at Authority facilities will assure a consistent stream of revenue from year to year; and

WHEREAS, ensuring the delivery of Delaware solid waste to the Authority will also help ensure that Delaware solid waste is disposed of in properly designed landfills; and

WHEREAS, ensuring delivery of Delaware solid waste to the Authority will help ensure that hazardous wastes are not improperly disposed of; and

WHEREAS, ensuring the delivery of Delaware solid waste to Authority landfills will allow the Authority to better evaluate and understand the volume and composition of solid waste generated in Delaware, which understanding is needed in order for the Authority to update and keep current the Statewide Solid Waste Management Plan; and

WHEREAS, on October 1, 2015, the Authority proposed amendments to the Delaware Solid Waste Management Plan that acknowledge the desirability of directing most Delaware solid waste to Authority designated facilities; and

WHEREAS, a public hearing was held on November 2, 2015 on these proposed amendments; and
WHEREAS, the Authority's hearing officer, James D. Nutter, has issued his Proposed Order and Recommendations on the matter, and has recommended adoption of the amendments to the Statewide Solid Waste Management Plan without changes from the form of amendments proposed by the Authority; and

WHEREAS, the Authority's management has recommended that the Board of Directors adopt the amendments without change from the form first proposed by the Authority; and

WHEREAS, the Board of Directors of the Authority has considered the recommendations of management and has reviewed the hearing officer's Proposed Order and Recommendations, as well as the transcript of the hearing, and all documents admitted into evidence.

NOW THEREFORE, be it:

RESOLVED, that the Board of Directors of the Delaware Solid Waste Authority adopts the amendments to the Statewide Solid Waste Management Plan in the form proposed by the Authority on October 1, 2015, and in furtherance thereof shall execute a Final Order accomplishing same.

FURTHER RESOLVED, that management of the Delaware Solid Waste Authority shall take all steps necessary to ensure that the Final Order is published in the Delaware *Register of Regulations* and that the amendments to the Statewide Solid Waste Management Plan become effective on and after July 1, 2016.

So adopted this 3rd day of December, 2015

FINAL ORDER AND DECISION

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on proposed amendments to the Statewide Solid Waste Management Plan (the "SSWMP").

2. On October 1, 2015, the Delaware Solid Waste Authority caused to be published, in the Delaware *Register of Regulations*, notice of proposed amendments to the SSWMP. The proposed amendments to the SSWMP were also the subject of publication on the DSWA website as well as in the Delaware *News Journal* and the Delaware *State News* on October 1 and 4, 2015.

3. In accordance with 7 **Del.C.** §6403(i) and 29 **Del.C.** §10117, on November 2, 2015 a hearing was held before James D. Nutter, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony were received into evidence. Public comment was also received.

4. The Authority issues this Final Order and Decision after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated December 1, 2015.

Summary of Evidence, Findings of Fact and Conclusions of Law

5. The summary of evidence set forth in the hearing officer's Proposed Order and Recommendations accurately summarizes the documentary evidence and verbal testimony received into the record.

6. The findings of fact and conclusions of law in the Proposed Order and Recommendations appear well reasoned and amply supported by the summary of the evidence contained therein.

7. Accordingly, the summary of the evidence, findings of fact and conclusions of law set forth in the Proposed Order and Recommendations are incorporated by reference and adopted herein in their entirety as if fully set forth herein.

The Hearing Officer's Report can be viewed at the following link:

(<http://regulations.delaware.gov/register/january2016/final/HearingOfficersReportSSWMP.pdf>)

Decision

8. For the reasons set forth above, the Statewide Solid Waste Management Plan is amended in the form set forth in Exhibit A hereto.

SO ORDERED, this 3rd Day of December, 2015.

Gerald L. Esposito, Chairman

Michael R. Paraskewich, Jr., Ph.D, P.E.

Ronald G. McCabe, Vice Chair
Norman Griffiths

Tonda L. Parks (absent)
Timothy P. Sheldon

***Please note that no changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 231 (19 DE Reg. 231). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

502 Statewide Solid Waste Management Plan

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 252

REGULATORY IMPLEMENTING ORDER

252 Required Educational Records and Transfer and Maintenance of Educational Records

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. This regulation is being amended to clarify the maintenance and transfer of student records as it pertains to private and public schools and educational programs operated by the Department of Services for Children, Youth and Their Families. It also clarifies when the student's records should be maintained as an original Cumulative Record File and when they are permitted to be copied and transferred.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) concerns that there is no definition of "public school" in the regulation, which may cause a problem if a student transfers to an out of state school; (2) suggestion that Delaware public schools should keep a copy of the cumulative file sent to an out of state public school so that there is a Delaware record. The Department added the definition of public school into the regulation for clarification. The Delaware Public Records Law controls as to whether copies of records sent to out of state public schools should be kept; therefore no changes were made regarding this issue.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records in order to clarify the maintenance and transfer of student records as it pertains to private and public schools and educational programs operated by the Department of Services for Children, Youth and Their Families. It also clarifies when the student's records should be maintained as an original Cumulative Record File and when they are permitted to be copied and transferred.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of December 2015.

Department of Education
Steven H. Godowsky, Secretary of Education

Approved this 17th day of December 2015

252 Required Educational Records and Transfer and Maintenance of Educational Records

1.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

“**Court Orders**” shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student’s care or custody.

“**Delaware School Health Record**” shall mean the form required by 14 **DE Admin Code** 811 for Delaware public school students.

“**Discipline Record**” shall mean information about any and all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district’s code of conduct or other rules.

“**Emergency/Nursing Treatment Card**” shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin. Code** 811.

“**Identifying Data**” shall mean the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

“**Progress Report**” shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the ~~DSTP~~ or successor state student assessment; and attendance data for each year of the student’s attendance.

["**Public School**" means a school or charter school having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators.]

“**Student Transcript**” shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the ~~DSTP~~ or successor state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2015 issue of the *Register* at page 355 (19 DE Reg. 355). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

252 Required Educational Records and Transfer and Maintenance of Educational Records

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))

REGULATORY IMPLEMENTING ORDER

286 Application Fee For Educator Licensure

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 286 Application Fee for Educator Licensure. This regulation is being created pursuant to House Bill 146 of the 148th General Assembly, codified at 14 **Del.C.** §122(b)(27) and to comply with 14 **Del.C.** §122 related to educator licensure. This regulation establishes a one-time non-refundable fee of \$100 for educators seeking new licenses in Delaware.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2015, in the form hereto attached as Exhibit "A". No public comments were received, but the Department of Education clarified that it is both Section 121(c) and subchapter II of Chapter 12 of 14 Del. Code that is referenced in the definitions of Advanced License, Continuing License and Initial License. Additionally it removed Section 3.3 as it was not needed.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 286 Application Fee for Educator Licensure in accordance with House Bill 146 of the 148th General Assembly, codified at 14 **Del.C.** §122(b)(27) and to comply with 14 **Del.C.** §122 related to educator licensure. This regulation establishes a one-time non-refundable fee of \$100 for educators seeking new licenses in Delaware.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 286 Application Fee for Educator Licensure. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 286 Application Fee for Educator Licensure attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 286 Application Fee for Educator Licensure hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 286 Application Fee for Educator Licensure amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 286 Application Fee for Educator Licensure in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of December 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 17th day of December 2015**State Board of Education**

Teri Quinn Gray, Ph.D., President

Gregory B. Coverdale, Jr.

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Nina L. Bunting

Barbara B. Rutt

286 Application Fee For Educator Licensure

1.0 Purpose

The purpose of this regulation is to comply with 14 Del.C. §122(b)(27) related to educator licensure. This regulation sets forth the rules and guidelines related to fees for educator licensure. Specifically, the Department of Education will implement a one-time, non-refundable fee of not more than \$100 for an educator's application in Delaware. This application may be for an Initial, Continuing or Advanced License.

2.0 Definitions

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. [§121(c) and 14 Del.C.] Ch. 12, subchapter II.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in and 14 Del.C. [§121(c) and 14 Del.C.] Ch. 12, subchapter II.

"Department" means the Delaware Department of Education.

"Educator Licensure Application Fee" means the one-time, non-refundable fee of not more than \$100 an individual pays for a first educator license in Delaware.

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. [§121(c) and 14 Del.C.] Ch. 12, subchapter II.

3.0 Application Process

3.1 Effective the later of January 15, 2016 or upon activation of the online payment option within the electronic licensure and certification system, applicants seeking an educator licensure in Delaware shall:

3.1.1 Establish an online account in the electronic licensure and certification system in Delaware;

3.1.2 Submit official documents to the Department to support their application;

3.1.3 Pay a one-time, non-refundable \$100 application fee via debit or credit card through the electronic licensure and certification system when applying for an Initial, Continuing, or Advanced License; and

3.1.4 Meet all statutory and regulatory requirements.

3.2 An application will not be processed until all conditions of 3.1 are met.

~~3.3 Upon online payment and submission of the application for educator licensure, the application will be reviewed and processed by the Department.~~

3.[43] Submission of an online fee and application does not entitle the applicant to the requested license.

4.0 Exemptions From Application Fee

4.1 Any person who submits an application for their first license in Delaware prior to January 15, 2016 shall be exempt from the application fee.

4.2 Any person who is already licensed and certified to teach in Delaware prior to January 15, 2016 shall be exempt from the application fee.

5.0 Fee Payment and Collection

- 5.1 No installment or partial payments of the fee will be accepted. Only full payment of the fee, to be made as part of the online electronic application, is permitted.
- 5.2 No appeals, exceptions, or waivers shall be granted for the fee.
- 5.3 All fees collected pursuant to this regulation shall be deposited in the General Fund.
-

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 817

REGULATORY IMPLEMENTING ORDER**817 Medications and Treatments****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is being amended to clarify assistance with self-administration of medications at unique approved school activities, such as extended field trips, and to update a citation to the Delaware Code.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) legislation (specifically Senate Bill 257 of the 146th General Assembly) that was previously passed but that they believe was never fully implemented by the Department of Education because it excluded contractors; (2) they believe that the proposed amendments are a way to allow "exemption" to various legislation regarding public schools and healthcare accommodations due to cost or resources. In response, the Department of Education notes that it has fully implemented Senate Bill 257, as the definition of "Other School Employees" in this regulation includes those contracted by schools. Additionally, there is nothing in this amendment to support the Councils' assertions, and the Department's amendment is not based on a limited economic or human resource; rather is a means to allow for increased access and opportunity for students to receive medications and treatments while participating in unique situations for which the general policy is not applicable. Likewise, the Department expects that any policy developed would be done in accordance with the law. No changes were made to this regulation based upon comments received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments to clarify assistance with self-administration of medications at unique approved school activities, such as extended field trips, and to update a citation to the Delaware Code.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 817 Medications and Treatments amended hereby shall be in the form

attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of December 2015.

Department of Education
Steven H. Godowsky, Secretary of Education

Approved this 17th day of December 2015

***Please note that no changes were made to the regulation as originally proposed and published in the November 2015 issue of the *Register* at page 362 (19 DE Reg. 362). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

817 Medications and Treatments

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1559

REGULATORY IMPLEMENTING ORDER

1559 Skilled and Technical Sciences Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1559 Skilled and Technical Science Teacher in order to expand Career and Technical Education into 21st century careers, and to create opportunities for all students to pursue a career and college readiness as part of their instructional program. This regulation sets forth the requirements for a Skilled and Technical Sciences Teacher.

Notice of the proposed amendment of the regulation was published in the *Delaware Register of Regulations* on October 1, 2015. The notice invited written comments. No public comments were received.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation under the five-year review cycle.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

FINAL REGULATIONS

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1559 Skilled and Technical Science Teacher of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5th DAY OF NOVEMBER, 2015

Bryon Murphy, Chair	Cristy Greaves
Diane Albanese	Darren Guido
Amber Augustus	David Kohan
Linda Brown (absent)	Rosaria Macera
Jennifer Burton	Darlene O'Neill
Stephanie DeWitt	Mary Pinkston
Nelia Dolan	Stephanie Smith
Laura Glass	Sue Smith

IT IS SO ORDERED the 19th day of November, 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of November, 2015.

State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan
Jorge L. Melendez, Vice President (not present)	Barbara B. Rutt
Nina Lou Bunting	Terry M. Whittaker, Ed.D. (not present)
Gregory B. Coverdale, Jr.	

***Please note that no changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 237 (19 DE Reg. 237). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1559 Skilled and Technical Sciences Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1583

REGULATORY IMPLEMENTING ORDER

1583 School Psychologist

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education,

seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1583 School Psychologist. Amendments were made to clean up language involving specialist programs. This regulation sets forth the requirements for a School Psychologist.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on October 1, 2015 in the form hereto attached as Exhibit "A". The notice invited written comments. Public comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities that both endorsed the proposed changes to the regulation. The proposed change that was suggested was considered by the Professional Standards Board, but no change was made at this time.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation under the five year review cycle.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1583 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5th DAY OF NOVEMBER, 2015

Bryon Murphy, Chair	Cristy Greaves
Diane Albanese	Darren Guido
Amber Augustus	David Kohan
Linda Brown (absent)	Rosaria Macera
Jennifer Burton	Darlene O'Neill
Stephanie DeWitt	Mary Pinkston
Nelia Dolan	Stephanie Smith
Laura Glass	Sue Smith

IT IS SO ORDERED the 19th day of November, 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of November, 2015.

State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan
Jorge L. Melendez, Vice President (not present)	Barbara B. Rutt
Nina Lou Bunting	Terry M. Whittaker, Ed.D. (not present)
Gregory B. Coverdale, Jr.	

*Please note that no changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 241 (19 DE Reg. 241). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1583 School Psychologist

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1595

REGULATORY IMPLEMENTING ORDER

1595 Certification Programs for Leaders in Education

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being amended to change the adoption and renewal process involving certification programs for leaders in education. This regulation sets forth the requirements for a Certification Programs for Leaders in Education.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on October 1, 2015. The notice invited written comments. Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens. The suggestions that were made by both groups were considered by the Professional Standards Board, but no changes were made at this time.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1595 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5th DAY OF NOVEMBER, 2015

Bryon Murphy, Chair

Cristy Greaves

Diane Albanese
Amber Augustus
Linda Brown (absent)
Jennifer Burton
Stephanie DeWitt
Nelia Dolan
Laura Glass

Darren Guido
David Kohan
Rosaria Macera
Darlene O'Neill
Mary Pinkston
Stephanie Smith
Sue Smith

IT IS SO ORDERED the 19th day of November, 2015.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of November, 2015.

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President (not present)

Nina Lou Bunting

Gregory B. Coverdale, Jr.

G. Patrick Heffernan

Barbara B. Rutt

Terry M. Whittaker, Ed.D. (not present)

***Please note that no changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 243 (19 DE Reg. 243). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1595 Certification Programs for Leaders in Education

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Reimbursement Methodology for Home Health Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Home Health Services, specifically, *to update the methods and standards governing reimbursement methodology language for home health services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 30, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to amend the Title XIX Medicaid State Plan regarding Home Health Services specifically, *to ensure compliance with federal law and regulations by updating the methods and*

standards language governing reimbursement methodology for home health services.

Statutory Authority

- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*
- 42 CFR 441.15, *Home health services*
- 42 CFR 441.16, *Home health services requirements for surety bonds*
- 42 CFR 440.70(a)(3), *Medical supplies, equipment, and appliances*
- 42 CFR 440.120, *Prosthetic devices*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Home Health Services provide medically necessary care to an eligible Medicaid recipient whose medical condition, illness, or injury requires the care to be delivered in the recipient's place of residence or other authorized setting. These services promote, maintain, or restore health, or minimize the effects of illness and disability.

Home Health Services, as federally defined and subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16, include not only home health nursing services, but also home health aides; medical supplies, equipment and appliances suitable for use in the home; physical therapy, occupational therapy, and speech pathology and audiology services provided by a home health agency or facility licensed to provide medical rehabilitation services (42 CFR 440.70).

Mandatory Home Health Services are defined as nursing services, home health aide services, and medical supplies, equipment and appliances (42 CFR 440(b)).

Optional Home Health Services are defined as physical therapy, occupational therapy, and speech pathology and audiology services provided by a home health agency or facility licensed to provide medical rehabilitation services (42 CFR 440.70(b)).

Home Health Services are provided to a beneficiary at his/her place of residence or other authorized setting upon physician order as part of a written plan of care. Services include part-time or intermittent visits by a registered nurse; visits by credentialed home health aides employed by a home health agency participating in the Medicaid program; and medical supplies, equipment and appliances required by the beneficiary and suitable for use in the home. In addition, states may choose to have home health agencies provide, when medically necessary and ordered by the beneficiary's physician, physical therapy services, occupational therapy services, and speech pathology and audiology services.

Summary of Proposal

Home Health Services are Medicaid State Plan services that are provided on a part-time and intermittent basis to Medicaid beneficiaries of any age. Home health services include home health nursing, home health aide, and skilled therapies (physical therapy, occupational therapy, and speech-language pathology).

Purpose

During review and subsequent approval on December 31, 2014 of Delaware's 1915(i) Home and Community State Plan Option Amendment (Pathways to Employment), the Centers for Medicare and Medicaid Services (CMS) performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed that the reimbursement language for home health services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous and auditable. This amendment proposes to revise the payment methodology language for home health services.

Proposal

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing home health services reimbursement methodology language currently described at Medicaid State plan page Attachment 4.19-B Page 6 by:

- defining the reimbursable unit of service;

- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

Current Methodology:

Providers are reimbursed a prospective determined rate according to each Home Health service rendered.

Proposed Methodology:

The proposed methodology will be a universal rate for each Home Health service type. All providers would receive the same rate for each procedure code. Moreover, as the budget allows, update each rate annually by applying an inflation factor derived from the CMS Home Health Market Basket.

Durable Medical Equipment

Current state plan page Attachment 4.19-B Page 11 list “a nationally recognized pricing system” in the hierarchy of pricing. If there was no pricing found in the Durable Medical Equipment Regional Carrier (DMERC) Region A fee schedule, the Delaware Medical Assistance Program (DMAP) utilized EPIC Plus, a pricing software package produced by the Medical Data Institute (MDI). The EPIC Plus, updated periodically, ensured that the DMAP has the most current products and supplier information available. If no rate is found in the DMERC or the EPIC Plus, the provider’s cost/price sheet is used.

MDI notified DMAP that support for the EPIC Plus disk will not be provided beyond June 2015. An amendment to the state plan is proposed to remove the nationally recognized pricing system reference language.

DMAP will continue to utilize the DMERC Region A fee schedule and information received from the DME provider such as catalog pages that include the manufacturer’s name, item model number, and costs or a copy of the company’s invoice that describes the item and gives an itemized explanation of all charges.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the methods and standards governing payment methodology for home health services. Comments were due by 4:30 p.m. on October 30, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to methodology and payment rates of Home Health Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

The proposed amendment clarifies reimbursement methodology descriptions and standardizes language. An estimated fiscal impact was obtained using State Fiscal Year (SFY) 2014 Home Health paid claim information. The following fiscal impact is projected for Federal Fiscal Years (FFY) 2016 and 2017:

	Federal Fiscal Year 2016	Federal Fiscal Year 2017
General (State) Funds	\$ (2,951.00)	\$ (2,752.00)
Federal Funds	\$ (7,543.00)	\$ (7,948.00)

DMAP's proposal involves no change in the definition of those eligible to receive home health services under Medicaid, and the home health services benefit to eligible beneficiaries remains the same.

Durable Medical Equipment

The proposed amendment updates reimbursement methodology description to reflect current practice; and, as such, DMAP does not anticipate any impact to the General Fund. DMAP's proposal involves no change in the definition of those eligible to receive durable medical equipment (DME) and supplies under Medicaid, and the DME services benefit to eligible beneficiaries remains the same.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

In general, the new methodology is a universal rate for each home health service type. All providers would receive the same rate for each procedure code and rates would be increased annually based on an inflation factor derived from a CMS source. Id. Reimbursement standards for durable medical equipment (DME) are being revised to reflect the discontinuation of the EPIC Plus pricing software.

GACEC only has the following technical observation: In the section on AAC systems, first paragraph, the word "devise" should be "device".

Agency Response: DMMA agrees; "devise" is changed to "device" and is indicated in the final order regulation in **[Bracketed bold type]**.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Home Health Services, *specifically, to update the methods and standards governing reimbursement methodology language for home health services*, is adopted and shall be final effective January 10, 2016.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-26a

REVISION:

ATTACHMENT 4.19-B
Page 6

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

HOME HEALTH SERVICES

42 CFR 440.70

Home Health Services

1. ~~Providers of Home Health services shall be reimbursed prospectively determined rates according to standard HCPGS definitions.~~
2. ~~Providers will be prospectively reimbursed the lower of their Usual and Customary charge or the Medicaid rate.~~

Home Health Services are reimbursed as follows:

Home Health Services are reimbursed in accordance with 42 CFR 42 CFR 440.70 and when provided as defined in Attachment 3.1-A of this State Plan, subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16.

Home Health agencies must be certified by Medicare and be properly licensed by the State in which they are located.

Payment for Home Health Services shall be reimbursed as follows:

The rates are prospective and are arrayed to determine the seventy-fifth (75th) percentile for each procedure code. The rates are then inflated (if the budget allows) by the four (4) quarter moving average within the CMS Home Health Market Basket Index. The inflated average cost is per fifteen (15) minutes of each agency. Supply costs will be reimbursed as part of the skilled nursing and home health aide prospective rates.

ATTACHMENT 4.19-B
Page 6.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

HOME HEALTH SERVICES CONTINUED

42 CFR 440.70

An inflation factor will be applied to the prior year's rates to determine the current year's rates. The inflation indices are obtained from the CMS Home Health Market Basket Index.

The agency's fee schedule rate is based upon the Home Health cost of services for a Home Health Aide, Skilled Nurse, Physical Therapist, Occupational Therapist, and a Speech Therapist.

The fee schedule and any annual periodic adjustments to the fee schedule are published on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers.

**DMMA FINAL ORDER REGULATION #15-26b
REVISION:**

ATTACHMENT 4.19-B
Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

FINAL REGULATIONS

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

Reimbursement for Assistive Technologies and Supplies

~~DURABLE MEDICAL EQUIPMENT (DME), SUPPLIES, APPLIANCES, ORTHOTICS AND PROSTHETICS~~

Durable Medical Equipment, Appliances, Prosthetics, Orthotics, and Supplies

42 CFR 440.70

In accordance with 42 CFR 440.70, the Delaware Medical Assistance Program (DMAP) will reimburse Durable Medical Equipment (DME) providers for the purchase/rental of medical equipment, appliances, orthotics and prosthetics and the purchase of medical supplies when ordered by a medical practitioner.

Reimbursement is determined by the DMAP based on one of the following:

- The Medicare fee schedule received yearly from the Region A - Durable Medical Equipment Regional Carrier (DMERC) OR
- ~~A nationally recognized pricing system OR~~
- Information received from the DME provider such as catalog pages that include manufacturer's name, item model number, and costs or a copy of the company's invoice that describes the item and gives an itemized explanation of all charges. (It is not permissible for the DME provider to "roll in" other expenses such as labor, delivery, fittings, etc.).

Except where there is a Medicare fee established, DMAP pays the lower of:

- Provider's usual and customary charges
- Cost + 20% (includes administration fee)
- List price.

Augmentative and Alternative Communication Devices/Systems

The reimbursement for augmentative and alternative communication devices/systems is determined based on documented actual cost to the provider for the device plus twenty percent (20%) on the first \$1,000 and five percent (5%) on the balance, or the provider's usual and customary charge for the **[device device]**, whichever is lower.

The fee schedule and any annual periodic adjustments to these rates are published on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private individual providers.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Reimbursement Methodology for State Plan Personal Care Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 30, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend the Title XIX Medicaid State Plan regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit*.

Statutory Authority

- 1902(a)(24) of the Social Security Act, *Personal Care Services*
- Section 4480 of the State Medicaid Manual, *Personal Care Services*
- 42 CFR 440.167, *Personal care services*
- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*
- 42 CFR.447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Personal Care Services are an optional Medicaid benefit described under sections 1905(a)(24) and 1902(10) of the Social Security Act and further defined in section 4480 of the State Medicaid Manual.

Section 1905(a)(24) defines personal care services as services furnished to an individual who is not an inpatient or resident of a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR) or institution for mental diseases that are:

- a. authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;
- b. provided by an individual who is qualified to provide such services and who is not a member of the individual’s family; and,
- c. furnished in a home or other location.
- d. Regulatory oversight is found in 42 CFR 440.167 of the Code of Federal Regulations.

DISCLAIMER:

The terminology used to describe people with disabilities has changed over time. Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) supports the use of "People First" language. Federal laws, regulations and policies use the term “intermediate care facilities for the mentally retarded (ICF/MR)”. DHSS/DMMA does not endorse this term and uses the accepted term “individuals with intellectual disability” (ID) instead of “mental retardation.” However, as ICF/MR is the abbreviation currently used in all Federal requirements, that acronym will be used here. The revised terminology will not alter the meaning of this rule nor will it impact any determinations for eligibility of services.

Personal Care Services (also known in States by other names such as personal attendant services, personal assistance services, or attendant care services, etc.) covered under a State’s program may include a range of human assistance provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks that they would normally do for themselves if they did not have a disability. Assistance may be in the form of hands-on assistance (actually performing a personal care task for a person) or cuing so that the person

performs the task by him/herself. Such assistance most often relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management. Personal care services can be provided on a continuing basis or on episodic occasions. Skilled services that may be performed only by a health professional are not considered personal care services.

Summary of Proposal

Purpose

During review and subsequent approval on December 31, 2014 of Delaware's 1915(i) Home and Community State Plan Option Amendment (Pathways to Employment), the Centers for Medicare and Medicaid Services (CMS) performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed an issue that requires a state plan amendment (SPA) to sunset coverage and reimbursement methodology for Personal Care Services as personal care as a service will be provided as a component of home health services.

Proposal

DHSS/DMMA intends to remove coverage and reimbursement methodology for the Personal Care Services (PCS) option from the Delaware Medicaid State Plan as those services will now be delivered through the Home Health Services benefit. Therefore, the sunset language in the SPA reflects that current coverage for PCS in Attachment 3.1-A and the reimbursement methodology for PCS in Attachment 4.19-B will cease on December 31, 2015.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage, methods and standards governing payment methodology for personal care services. Comments were due by 4:30 p.m. on October 30, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to coverage, methodology and payment rates of State Plan Personal Care Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

Personal Care Services will now be delivered through Home Health Services.

This revision imposes no increase in cost on the General Fund as home health services is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive personal care services under Medicaid, and the personal care services benefit to eligible beneficiaries remains the same.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD

First, the change may result in a reduction in available providers for non-monetary reasons. Licensing of "personal assistance services agencies" is separate from licensing of "home health agencies". Compare Title 16 **Del.C.** §122x and 16 **DE Admin Code** 4469 (personal assistance licensing) with 16 **Del.C.** §122(o) and 16 **DE Admin. Code** 4406 (home health licensing). Agencies currently providing "personal assistance services" will ostensibly have to apply for new licenses as "home health agencies".

Second, it would be unfortunate if the change results in a reduction in the scope of currently-covered services. Consider the following:

A. Licensed "personal assistance" agencies can perform any acts individuals could normally perform themselves but for functional limitations consistent with Title 24 **Del.C.** §1921(a)(15) and Title 16 **Del.C.** §122x.2. CMS has historically adopted the same broad approach for "personal care assistance" as including "a range of human assistance provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks that they could normally do for themselves if they did not have a disability." See attached CMS, State Medicaid Manual, §4480C. Licensed "home health" agencies lack that authority.

B. Services provided by licensed "personal assistance" agencies are not required to be supervised by a nurse. All services provided by licensed "home health" agencies must be supervised by a registered nurse. See Title 16 **Del.C.** §122oB(V)2.C.

C. The required qualifications of persons providing "home health services" are much more extensive than the qualifications of persons providing "personal assistance". Compare 16 **DE Admin Code** 4406.1.1, definition of "home health aide", with 16 **DE Admin. Code** 4469.1.1, definition of "direct care worker".

Third, when we initially reviewed the proposed regulation, it appeared unclear what effect the change would have on attendant services provided under the DSHP+ program. DMMA notes that "personal care services" are also known by other names "such as personal attendant services, personal assistance services, or attendant care services, etc.". At 259. The DSHP+ contracts with MCOs require coverage of "attendant care services" independent of coverage of "home health services". See attached excerpts from 2015 DMMA-MCO contract. One could infer that DMMA's elimination of "personal care services" from the Medicaid program represents either actual program elimination of "attendant services" or is a precursor to such elimination. However, we communicated with the DMMA Director who stated that "(t)here is no actual or planned elimination of attendant services." See attached October 12, 2015 email communication.

Agency Response: DMMA is not proposing a change in the delivery and authorization of these services to eligible individuals. These services will continue to be provided as a component of home health services for eligible individuals.

No change was made to the regulation as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services, specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit* is adopted and shall be final effective January 10, 2016.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-27a
REVISION:

Revision: HCFA-PM-91-4 (BPD) ATTACHMENT 3.1-A
 AUGUST 1991 Page 9 Addendum
 OMB No.: 0938

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE
 AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

24.f. Personal Care Services

Coverage for Personal Care Services (PCS) described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Eligible recipients of personal care are Medicaid recipients who are disabled by mental illness, alcoholism, or drug addiction as defined in the Medicaid Provider Manual for Community Support Service Programs.

Persons eligible to provide personal care services are those who are qualified as an Assistant Clinician as defined in the Medicaid Provider Manual for Community Support Service Programs.

The recipient's physician must certify medical necessity for personal care services based on a completed comprehensive medical/psycho-social evaluation and treatment plan as defined in the Medicaid Provider Manual for Community Support Service Programs.

DMMA FINAL ORDER REGULATION #15-27b
REVISION:

ATTACHMENT 4.19-B
 Page 15

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
 OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

STATE PLAN PERSONAL CARE SERVICES

Personal Care Services

The payment methodology for Personal Care Services described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Payment for personal care services is based on a fee-for-service, the rate for which is set by a rate setting committee (including representatives of the Department of Health and Social Services' Division of Social Services, Management Services, and Alcohol, Drug Abuse and Mental Health) on an annual and provider specific basis.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 25 (16 **Del.C.** Ch. 25)
16 **DE Admin. Code** 4304

ORDER

4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Orders for Scope of Treatment (4304). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §2506A.

On November 1, 2015 (Volume 19, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

Minor comments regarding grammatical and formatting issues were received that addressed observations made throughout the document. These changes have been made in the final document presented here where the recommended change did not result in a substantive change to the meaning or intent of the section affected. Corrections to spelling, grammar and other technical aspects of the final regulations are not addressed individually here, but are highlighted in the final regulations published in the January edition of the Delaware *Register*.

Comments from State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens

Comments on the proposed revisions to the DMOST Regulations were received from the Governor's Advisory Council for Exceptional Citizen's and the State Council for Persons With Disabilities. As the comments from both agencies were similar in scope and nature, they are addressed concurrently in this summary of evidence.

Comment:

First, in the definition of "Advance health care directive", the definition seeks to clarify that Advance Health Care Directives (AHCDs) that are valid where executed are to be honored in Delaware. However, the regulatory definition adds the phrase "valid under Delaware law" to the statutory definition. This language suggests that the only out of state AHCDs that are recognized in Delaware are ones that are valid where executed and in Delaware. This requirement would prove unworkable and is inconsistent with the statutory language in 16 **Del. Code** §2503A(a) and of 16 **Del. Code** §2517, which plainly states that AHCDs valid where executed are honored in Delaware, whether they strictly comport to Delaware law or not.

Response:

The definition of Advance Health Care Directive has been revised for clarification that an AHCD is recognized in Delaware if it is recognized in the jurisdiction where it was executed.

Comment:

Second, Section 4.7 addresses situations where a person has decision-making capacity but is unable to communicate by speaking or writing. In those circumstances, the person is allowed to communicate through the method by which they usually communicate, so long as the person interpreting understands that method. This must be documented in the medical record.

There is always a concern in these circumstances that the person interpreting is actually doing so and not

substituting their own words or wishes. The requirement that there be a notation in the chart is a limited safeguard. However, it would be appropriate to add a requirement that there be a witness to this communication and that a health care practitioner has noted some indication of reliability regarding the ability of the interpreter to understand what is being communicated.

Response:

Additional documentation of the communication in these instances has been added to 4.7.2 to address these concerns.

Comment:

In addition, this section does not and cannot eliminate the requirement under the Americans with Disabilities Act (ADA) or state law that a health care facility provide effective communication for individuals with communication impairments. This should be clearly stated in the regulation. It would be unfortunate for this regulation to be used to deny qualified interpreters when they are required and sanction the use of lay interpreters or family members, which is often inappropriate.

Response:

The existing requirement for facilities to provide effective communication to people with communication impairments is now stated in the regulation in 4.7.

SCPD and GACEC Comments on DMOST Form and Directions:

Comment:

First, in the DMOST form, an "s" is needed in bullet 4 at the end of "measure."

Response:

Corrected.

Comment:

Second, in Section E, it is unclear who is signing on the line to the immediate right. You have to check the directions to be sure.

Response:

This has been addressed.

Comment:

Third, the line regarding whether an appointed representative can alter a DMOST should be set off in some fashion, either by bolding or by line. It gets lost in the rest of the box which is unfortunate since this is a very significant designation. The Division might consider using a yes/no box format or adding it to Box F.

Response:

An additional space has been added to help separate this line and make it clearer to the user of the form.

Comments from Stephen Kleiner, Esq., Kleiner & Kleiner, LLC

Comment:

Ambiguities regarding revocation of Authorized Representative's authority to change or void the DMOST. Section E of the proposed DMOST form as shown in the proposed regulations, includes a line to provide the "Name of Authorized Representative," "Relation to Patient," "Address" and "Phone Number." Below that is a line stating, "[i]f lose capacity, my Authorized Representative may not change or void this DMOST," followed by a blank signature line identified as "Patient Signature."

From this form, it appears that the Division intends, pursuant to 16 **Del.C.** §2511A (c), that a patient may revoke a named authorized representative 's authority to void or create a new DMOST only by expressly limiting such authority as evidenced by the patient's signature.

However, the proposed regulations at 2.1.2.5 state that "Section E contains ... a signature block for the patient to authorize an authorized representative the ability to void the DMOST form and execute a new DMOST form that changes the treatment choices if the patient loses decision-making capacity." (emphasis added) Contrary to the aforesaid form and 16 **Del.C.** §2511A (c), this language implies that such authority is, by default revoked, and the patient's signature is required to authorize such powers of an authorized representative.

To avoid this ambiguity, I suggest that section 2.1.2.5 be changed to read as follows:

2.1.2.5 Section E contains information as to whom the DMOST form was discussed with and it contains a signature block allowing the patient to revoke an authorized representative's authority to void the DMOST form and execute a new DMOST form that changes the treatment choices if the patient loses decision-making capacity.

Response:

The section in question has been revised to address the concerns raised by this comment. The section has been revised for clarity to ensure the proper intent of the regulation is more evident.

Comment:

Authority to sign the DMOST under existing Advance Health-Care Directives ("AHCD") for an agent under 16 Del. Code Ch. 25. The proposed regulations at 4.9.1 state "[t]he health-care practitioner shall determine if there is an individual who is the patient's authorized representative. This is determined by referencing the documentation giving such individual the required authority under law. The documentation should establish both that the authorized representative is the person named in this role and that the authorized representative has the authority to sign the DMOST form on behalf of the patient." (emphasis added) Similar language appears at section 4.9.2.2 of the proposed regulations.

While 16 Del.C. §2503A (1) requires only that the authorized representative "has the authority to make decisions with respect to the patient's health-care preferences being made on the DMOST form," the proposed regulations may be construed so as to require an express grant of authority to actually sign the DMOST form.

Many individuals have previously executed a statutory AHCD as provided at 16 Del.C. §2505, or by using the form provided by the Delaware Department of Health and Social Services at <http://www.dhss.delaware.gov/dsaapd/files/advancedirective.pdf> (last visited November 11, 2015). Without modification, neither of these forms expressly grant the agent the "authority to sign the DMOST form on behalf of a patient."

I suggest the language of the code be echoed in the proposed regulations, i.e. that the authorized representative have "the authority to make decisions with respect to the patient's health-care preferences being made on the DMOST form."

Response:

Clarifying language has been included in the final regulations.

Comments from Beverly Wik, Esq.

Comment:

Some of the edits of the attached forms are grammatical errors, others make sure that the same word is used consistently for the same thing in the same sentence or section of the proposed Regulations (as in patient, person, and individual in the same section or sentence), cap and not cap words that used repeatedly in the proposed Regulations are consistent, and inserting "articles" (such as an, a, the, etc.) in a sentence. Articles should be included but are often omitted in this day of texting and email-speak. I realize these are minor in nature, but I feel that the regulations should be grammatically correct.

Response:

Thank you for the thorough review of the proposed document. While we do not individually respond to these all the suggested edits, we have considered the recommendations and made the necessary edits in the final regulations. Responses to individual edits:

- AHCD Definition - Comments here were addressed by language revisions made in response to Mr. Kleiner's comments.
- DMOST definition - This definition is taken largely from statutory language and only minor changes were made to existing text with one exception. The final statement was revised to read, "The DMOST form is applicable across health-care settings, is reviewable, and [the patient controls if it] can be voided". The revised language was used to clarify the patient has control over voiding the form.
- DMOST Form definition was revised to specify authorized representative in a case where a patient lacks decision making capacity.
- Patient's Authorized Representative - comments on this section did not result in changes as the language used has been well-vetted with stakeholders and reviewers felt the existing statement was clear.
- Serious Illness or Frailty - comments on this section did not result in changes as the language used has been well-vetted with stakeholders and reviewers felt the existing statement was clear.

- 2.1 - Comments suggesting "a form" be used did not result in revision. DHSS feels that adding the article would indicate that it is permissible to use any form, rather than the DHSS form that is required.
- 2.1.2.3.2 - Location is used as this language was carefully vetted and it refers to where the patient is. Setting could mean a different location but the same level of care.
- 3.1.6 - The proposed language was retained because it covers a broader scope of possible scenarios.
- 4.6 - comments on this section did not result in changes as the language used has been well-vetted with stakeholders and reviewers felt the existing statement was clear.
- 4.9 - comments on this section did not result in changes as the language used has been well-vetted with stakeholders and reviewers felt the existing statement was clear and the comment is further addressed by language added in 4.9.1
- 4.9.2 - comments on this section were addressed by changes to 4.9.1.
- 4.9.2.1 - comment on this section did not result in revisions as the language was well-vetted with stakeholders and provides flexibility of language in considering an order from another jurisdiction.
- 4.10 - Language revised to address comment.
- 5.4 - Language revised to address comment.
- 8.3 - Comments on this section did not result in revisions as the language is well-vetted with stakeholders and DHSS feels it is adequate.

Comment:

One pervasive problem is not using the hyphen in health care when "health care" is used as an adjective. When "health care" is used as an adjective it includes a hyphen and the DE Code for Advance Health-Care Directives consistently uses health-care when followed by Directive or "institution." When "health care" is used as a noun, then there is no hyphen, as in "the nurse provides health care to patients in the hospital."

Response:

After discussion within the Division of Public Health and review of the spelling and format of health care in statutes and other references, changes were made throughout these regulations. The final document consistently uses the accepted form, "health care" except when referring to "Advance Health-Care Directive" because that is the name of the legal document as stated in the statute.

Comment:

Lastly, I am concerned about Reg subsection 4.9.2 on page 5 of the attached. That subsection repeatedly uses the phrase "only with the appropriate authority." I strongly feel that this phrase should be given some explanation and tied to the documentation giving a patient's authorized representative the required authority under law. Health-care practitioners may not understand what is required and what the committee intended in its lengthy discussions about the authority of authorized representatives. I fear that health-care providers may assume that all that needs to be evaluated is whether a person is the appointed representative having the highest priority.

Because such evaluation is only the first step in the evaluation of the authority of a patient's authorized representative, I suggest adding a subsection 4.9.3 that explains the second step of such evaluation, i.e., understanding what is meant by "with the appropriate authority." Below is a suggested additional subsection to follow subsection 4.9.2.

4.9.3 If an authorized representative is executing a DMOST form for a patient without decision-making capacity that directs that life-sustaining treatment be withheld or withdrawn from such patient, the documentation relied upon by the health-care practitioner to determine the authorized representatives authority should indicate that the authorized representative has the authority to make the specific decisions that such authorized representative is indicating on a DMOST form, specifically decisions that direct that life-sustaining treatment be withheld or withdrawn. This is required because an order appointing a guardian of the person may not authorize that life-sustaining treatment be withdrawn or withheld (this is authority that is not part of a guardian of the person's general authority unless indicated in the court order appointing the guardian or a further order addressing the administration of life-sustaining authority), a medical power of attorney may not authorize withholding or withdrawing life-sustaining treatments, or only authorize withdrawing or withholding of life-sustaining treatment, until there has been a determination that the patient has certain conditions that physicians must certify (that a patient is in a permanently unconscious state or is in a terminal state), and a surrogate under the Delaware Surrogate Statute does not have the

authority to authorize withholding or withdrawing life-sustaining treatments unless again the patient has certain conditions that physicians must certify (is in a permanently unconscious state or is in a terminal state). In such instances, even if a DMOST form is signed by an authorized representative, the authorized representative will not have the "appropriate authority." Then action taken by health-care providers that rely upon a DMOST form signed by an authorized representative of a patient who does not have the appropriate authority could expose the authorized representative and the health-care providers to liability for improperly withholding or withdrawing life-sustaining treatment from a patient. In the event that a health-care practitioner is unsure as to whether an authorized representative has the appropriate authority, he or she should confirm the authority with the legal authorities of the patient and/or the authorized representative.

Response:

This comment is addressed by the change made to 4.9.1 in response to a similar comment from Mr. Kleiner.

FINDINGS OF FACT:

Minor changes were made to the proposed regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Medical Orders for Scope of Treatment (4304) is adopted and shall become effective April 1, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)o (16 Del.C. §122(3)o)
16 DE Admin. Code 4410

ORDER

4410 Skilled Home Health Agencies (Licensure)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Skilled Home Health Agencies (4410). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, §§ 122(3)(o).

On January 1, 2016 (Volume 19, Issue 7), DHSS published in the Delaware *Register of Regulations* its notice of exempted regulations, pursuant to 29 Delaware Code Section 10113. DHSS is amending the current regulations to replace language accidentally deleted from the regulations during a revision processed in 2014. Since this corrects a typographical error, it is not a substantive change.

FINDINGS OF FACT:

Language relating to dementia training required for staff at Skilled Home Health Agencies is being re-introduced into the regulations after being inadvertently deleted in an earlier revision.

THEREFORE, IT IS ORDERED, that the State of Delaware State of Delaware Regulations Governing Skilled

Home Health Agencies) is adopted and shall become effective January 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary
December 16, 2015

4410 Skilled Home Health Agencies (Licensure)
(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity Within Section)

5.8 Staff Development

(Break in Continuity Within Section)

5.8.12 Dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

4410 Skilled Home Health Agencies (Licensure)

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 50 (18 **Del.C.** §311 & Ch. 50)
18 **DE Admin. Code** 1801

ORDER

Docket No. 2969-2015

1801 Registration of Insurance Holding Companies

Proposed Amended Regulation 1801 relating to Registration of Insurance Holding Companies [Formerly Regulation 13] was published in the Delaware *Register of Regulations* on November 1, 2015. The comment period remained open until December 1, 2015. There was no public hearing on proposed amended Regulation 1801. Public notice of the proposed amended Regulation 1801 was published in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were not received on the proposed amended Regulation 1801. No changes were made to the proposed amended Regulation 1801.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §311 and Ch. 50 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1801 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §311 and Ch. 50; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1801 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed amended Regulation 1801 last appeared in the *Register of Regulations* Vol. 19, Issue 5, pages 396-397.

IT IS SO ORDERED this 1st day of January, 2016.
Karen Weldin Stewart, CIR-ML
Insurance Commissioner

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

1801 Registration of Insurance Holding Companies

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 **Del.C.** §354(i) & (j))

Secretary's Order No.: 2015-EC-0047

104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

Date of Issuance: December 15, 2015

Effective Date of the Amendment: January 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

The revised new regulation that will be adopted through this Order represents the culmination of more than three years of work that include multiple discussions with stakeholders, representatives of both private and public utilities, environmental advocacy organizations, legislators, and, of course, the public in general, along with three formal public hearings in two years. This revised new regulation is responsive to the concerns that have been raised in these discussions and through the public hearing process over the course of the last few years.

Background, Procedural History and Findings of Fact

This Order relates to the proposed revised new regulation, to wit: *Regulations Governing the Implementation of the Renewable Energy Portfolio Standards Cost Cap Provisions*, pursuant to 26 **Del.C.** §354(i) & (j) - 7 **DE Admin. Code** 104. The Department's Division of Energy and Climate commenced the regulatory development process with Start Action Notice 2012-03 dated April 16, 2012. The Department published its initial proposed new regulation in the December 1, 2013 Delaware *Register of Regulations*.

After numerous public workshops, stakeholder meetings, discussions and reviews, the Department placed legal notices in both the *News Journal* and the *Delaware State News* advertising that a public hearing would be held on January 8, 2014, to provide an opportunity for the public to comment on the proposed new regulation. Members of the public attended that public hearing, and many provided comment to the Department regarding the same, both at the time of the hearing and during the post-hearing time period. The public comment period closed

following the first hearing on January 24, 2014.

Subsequent to the record closing for comment after this initial public hearing in January of 2014, the Department's Division of Energy and Climate then began a thorough review of the record that had been generated to date with respect to this proposed promulgation, including, but not limited to, a detailed review of the formal hearing transcript, and all comment received from both the regulated community and the public at large. As a result of that review, and as a result of some of the comment received, revisions were made to the initial proposed regulation at that time, as the Department believed that numerous suggestions were meritorious and should be incorporated into the proposed regulation being developed in this matter.

At that same time, it was determined that the revisions made by the Department to this proposed new regulation were substantive enough to necessitate further vetting to both the regulated community and the public at large. Thus, after formal legal notice in both the *Delaware State News* and *The News Journal* was effected by the Department, and re-publication of this revised proposed new regulation in the *Register of Regulations* was made on December 1, 2014, a second public hearing was held once again at the Public Service Commission Conference Room Auditorium, 861 Silver Lake Blvd., Dover, Delaware on January 7, 2015.

As was the case at the first public hearing, members of the public attended the hearing on January 7, 2015, and many provided comment on the proposed revised new regulation, both at the time of the hearing and during the post-hearing time period. Given the amount of feedback the Department received subsequent to this second hearing, the Department issued a press release on January 20, 2015, announcing that the time period for public comment would be extended in this matter, in order to allow the Department to receive additional public comment in this matter. The public comment period closed following the second hearing on February 16, 2015.

Following the close of the public comment period subsequent to the second public hearing, the Department once again began its review of the voluminous amount of comment received to date in this matter. Again, many meritorious comments were taken into consideration, and, accordingly, substantive changes were made to the previously revised regulation, such that a third public hearing was deemed necessary. Thus, after once again effecting formal legal notice in both the *Delaware State News* and *The News Journal*, and re-submitting this revised proposed new regulation in the *Register of Regulations* for re-publication on November 1, 2015, a third public hearing was held at the Public Service Commission Conference Room Auditorium, 861 Silver Lake Blvd., Dover, Delaware on November 23, 2015. A few members of the public attended this third hearing, and once again comment was received by the Department regarding this proposed regulation, both at the hearing and during the post-hearing phase of this matter.

Subsequent to the third (and final) public hearing on November 23, 2015, the hearing record closed for public comment at close of business on December 8, 2015. At that time, the Department thoroughly reviewed that hearing's transcript, along with all additional comments received, and then prepared its formal Technical Response Memorandum ("TRM"), dated December 14, 2015, which documents the exhaustive review performed by the Department with regard to this proposed regulatory promulgation, and offers the Department's response to all comments received throughout this long regulatory process.

The Department has the statutory basis and legal authority, pursuant to 29 **Del.C.** §8003(7), to issue rules and regulations deemed necessary by the Secretary. Specifically, this rulemaking is in reference to the statutory authority specifically granted to DNREC's Division of Energy & Climate under 26 **Del.C.** §354(i) & (j). It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to receiving the Division of Energy and Climate's aforementioned TRM, The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated December 15, 2015 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the proposed revised new regulation as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed revised new regulation, to wit: 7 **DE Admin. Code** 104: *Regulations Governing the Implementation of the Renewable Energy Portfolio Standards Cost Cap Provisions*, pursuant to 26 **Del.C.** §354(i) & (j), is well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory revised new regulation be promulgated as final.

I find that the Department's experts in the Division of Energy and Climate fully developed the record to support adoption of this revised new regulation. The adoption of this revised new regulation will allow Delaware to adopt rules to govern how the Department's Director of the Division of Energy and Climate administer their obligations under 26 **Del.C.** §354(i) & (j). It should be noted that the statute directs when and whether said Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards, as provided for in 26 **Del.C.** §354.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed revised new regulation, pursuant to 29 **Del.C.** §8003(7), to wit: to issue rules and regulations deemed necessary by the Secretary. Specifically, this rulemaking references the statutory authority specifically granted to DNREC's Division of Energy & Climate, pursuant to 26 **Del.C.** §354(i) & (j);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting this proposed revised new regulation as final;

3. The Department provided adequate public notice of the initial proposed new regulation and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said new regulation, including at the times of each public hearing and all post-hearing phases of this promulgation as referenced in detail above, consistent with 29 **Del.C.** §10118(a), in order to consider all public comment on the same before making any final decision;

4. Due to substantive changes made to the proposed regulatory language during the course of this rulemaking process, the Department caused the revised proposed new regulation to be re-published in the State of Delaware *Register of Regulations* on December 1, 2014, and then again with additional revisions on November 1, 2015, provided the public with an ample amount of days to comment on the same as referenced above, and held the record open most recently through close of business on December 1, 2015, in order to consider all public comment on these proposed revised regulatory amendments before making any final decision;

5. While the Department made recent additional changes to the proposed regulatory language, as set forth in the above-referenced TRM of December 14, 2015, such changes do not alter the meaning or function of the proposed new regulation, and therefore no additional re-publication or noticing of this proposed regulation is necessitated at this time;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed revised new regulation, as set forth in its Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

7. Promulgation of the proposed revised new regulation to the proposed 7 **DE Admin. Code** 104: Regulations Governing the Implementation of the Renewable Energy Portfolio Standards Cost Cap Provisions, pursuant to 26 **Del.C.** §354(i) & (j), will allow Delaware to adopt rules to govern how the Department's Director of the Division of Energy and Climate administer their obligations under 26 **Del.C.** §354(i) & (j). It should be noted that the statute directs when and whether said Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards, as provided for in 26 **Del.C.** §354(a);

8. The Department has reviewed this proposed revised new regulation in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

9. The Department's proposed revised new regulation, as re-published in the November 1, 2015 Delaware *Register of Regulations*, and as revised and set forth in Appendix "B" of the aforementioned Hearing Officer's Report, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revised new regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

10. The Department shall submit this Order approving as final the proposed revised new regulation as a final new regulation, to wit: 7 **DE Admin. Code** 104: *Regulations Governing the Implementation of the Renewable Energy Portfolio Standards Cost Cap Provisions*, pursuant to 26 **Del.C.** §354(i) & (j), to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small
Secretary

104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**1.0 Purpose**

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

2.0 Definitions

For purposes of this regulation, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 **Del.C.** §§352(1) and 358(d).

"Avoided system costs" means reductions in electric generation, transmission or distribution costs.

"Commission-Regulated Electric Company" means the same as an Electric Distribution Company in 26 **Del.C.** §1001(12).

"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".

"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

"End-use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from regulated electric utilities.

"Exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.

"Externality benefits" means reductions in environmental, health and mortality costs [and improvements in habitat] resulting from reduced emissions.

"Freeze" means suspension of enforcement or implementation of the annual increase in the RPS as provided for under 26 **Del.C.** §§352(3) & 354(a).

"Green Energy Fund" means the grant program authorized under 29 **Del.C.** §8057.

"Integrated Resource Plan" or **"IRP"** means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 **Del.C.** §1007(c) & (d).

"Non-exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

"PJM" or **"PJM interconnection"** means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"Price suppression effects" means reductions in energy or capacity costs due to competitive pressures from renewable resources.

"PSC" means the Delaware Public Service Commission.

"REC costs of compliance" means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

"REC percentage requirements" and **"SREC percentage requirements"** mean the renewable energy portfolio requirements for each compliance year as set forth in 26 **Del.C.** §354(a).

“Renewable Energy Cost of Compliance” means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

“Renewable Energy Credit” or “REC” means a tradable instrument defined by 26 Del.C. §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“RPS” means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 Del.C., §354.

“Solar alternative compliance payment” means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 Del.C. §§352(24) and 358(e).

“Solar Renewable Energy Cost of Compliance” means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

“Solar Renewable Energy Credit” or “SREC” means the tradable instrument defined by 26 Del.C. §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“Third party supplier” means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

“Total Retail Costs of Electricity” means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

3.0 Application

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. These rules shall not apply to electric supply provided by either:
 - 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 Del.C. §363); or
 - 3.1.2 an exempted rural electric cooperative or a rural electric cooperative (as set forth in 26 Del.C. §363).
- 3.2 These rules will be applied immediately upon enactment.

4.0 Calculation of the Cost of Compliance

- 4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity as follows.
- 4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:
 - 4.2.1 the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus
 - 4.2.2 the cost of RECs and SRECs retired to satisfy the RPS requirement, plus
 - 4.2.3 all Alternative Compliance Payments.
- 4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:
 - 4.3.1 the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus
 - 4.3.2 the cost of SRECs retired to satisfy the RPS requirement, plus
 - 4.3.3 all Solar Alternative Compliance Payments for the solar photovoltaic requirement.

- 4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 Determination by the Director

- 5.1 The Director shall review the calculations of the Division.
- 5.2 If the Division calculations show that the Renewable Energy Cost of Compliance is greater than 3 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the ~~[staff of the]~~ PSC, determine whether a freeze should be implemented.
- 5.3 If the Division calculations show that the Solar Renewable Energy Cost of Compliance is greater than 1 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the ~~[staff of the]~~ PSC, determine whether a freeze should be implemented.
- 5.4 In making a determination, the Director ~~[may shall]~~ consider:
- 5.4.1 the overall energy market conditions;
- 5.4.2 the avoided cost benefits from the RPS;
- 5.4.3 the externality benefits due to the RPS; and
- 5.4.4 the economic impacts of the deployment of renewable energy in Delaware.
- 5.5 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.
- 5.6 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy that result in lower net electricity costs.
- 5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission-Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.
- 5.8 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 Implementation

~~If the Director determines that a freeze should be implemented under Section 5.0 above, the Director, in consultation with the staff of the PSC, will declare the freeze and notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the Delaware Register of Regulations.]~~

[7.0 6.0]Lifting of a Freeze

- [76].1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of this regulation.
- [76].2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of this regulation.
- [76].3 If the total cost of compliance falls below the 3 percent threshold in Section 5.2 of this regulation or [the] 1 percent threshold in Section 5.3 of this regulation, the Director shall lift a freeze following consultation with the ~~[staff of the]~~ PSC.
- [76].4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:
- [76].4.1 provide prior notice of the lifting of the freeze to the PSC; and
- [76].4.2 publish notice of the lifting of the freeze in the next appropriate issue of the Delaware Register of Regulations.

~~8.0~~ 7.0] Administration

- [87].1 Within 90 days after the end of any compliance year, the Commission-Regulated Electric Company shall submit to the Division in writing and electronically the following information for the applicable compliance year:
- [87].1.1 the Renewable Energy Cost of Compliance for that compliance year;
 - [87].1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year; and
 - [87].1.3 the Total Retail Costs of Electricity for that compliance year.
- [87].2 Within 30 days from receipt of the information described in Section ~~8.4~~ 7.1] of this regulation from the Commission-Regulated Electric Company, the Division shall calculate the cost of compliance as described in Section 4.0 of this regulation and present the results to the Director.
- [87].3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director will, after receipt of the calculations **[and consultation with the PSC]**, make a determination as described in Section 5.0 of this regulation and ~~[present to the Registrar for publication~~ **notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the Delaware Register of Regulations]**.
- [87].4 The public will have 15 business days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.
- [87].5 The Director shall make a final determination, including effective date, **[and]** provide public notice **[to the Registrar,]** and notify electronically and by mail the PSC, the Commission-Regulated Electric Company, and other interested parties within 15 business days of the close of public comments.

~~9.0~~ 8.0] Existing Contracts

In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(3) (7 **Del.C.** §§901(c & d) & 903(e)(3))

Secretary's Order No.: 2015-F-0036

3500 Tidal Finfish
3542 Tilefish

Date of Issuance: December 15, 2015

Effective Date of the Amendment: January 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed *revised* regulation Amendments to 7 **DE Admin. Code** 3500: *Tidal Finfish*, to include new Section 3542, to wit: *Tilefish* (hereinafter referred to as "*Tilefish* regulations"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-03 dated April 26, 2015. The Department published its initial proposed regulation Amendments in the June 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on June 24, 2015. Consistent with

29 Del.C. §10118(a), the public hearing record remained open for public comment initially through July 9, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to these *Tilefish* regulations ("Amendments"). Blueline Tilefish (*Caulolatilus microps*) is an ocean dwelling, deep water species that is susceptible to exploitation due to its long-lived, sedentary nature. The species is federally managed from North Carolina through Florida by the South Atlantic Fishery Management Council ("SAFMC") through the amended Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (1983).

The SAFMC sharply reduced the Annual Catch Limits in 2014 based on results from the 2013 coastwide stock assessment, which indicated the Blueline Tilefish ("Blueline") was overfished and overfishing was occurring. The harvest reductions in the South Atlantic resulted in the commercial sector targeting Blueline in unregulated Mid-Atlantic States, primarily New Jersey. Reported landings from Virginia and northward have increased from approximately 11,000 pounds annually (average 2005-2013) to about 217,000 pounds in 2014. Most of these fish were caught in federal waters off the coast of Delmarva. Additionally, Northeast vessel trip reports from the recreational for-hire sector indicated that Blueline landings significantly increased in the areas from approximately Cape Hatteras to mid-New Jersey (Federal Statistical Areas 616-636). Virginia and Maryland, although not SAFMC member states, enacted the *SAFMC Blueline Tilefish Regulations* earlier this year, in response to the 2014 landings. The Mid-Atlantic Fishery Management Council ("MAFMC") then formally requested that all member states consider adopting incidental commercial trip limits and recreational bag limits that mirror current Virginia and Maryland state regulations. This request was followed by an emergency meeting of the MAFMC, in which the council voted to request that the National Marine Fisheries Service ("NMFS") implement emergency rules to restrict commercial and recreational landings of Blueline Tilefish in the Mid-Atlantic.

Consistent with the MAFMC's request and input from Delaware's Advisory Council on Tidal Finfisheries, the Department proposed two options for a new Tilefish regulation. Both proposed options included a commercial trip limit of 300 pounds and a recreational possession limit of no more than seven (7) fish per person; however, Option #1 limited the new regulation to Blueline Tilefish, while Option #2 applied the regulation more broadly (as is the case in Maryland and Virginia) to include both Blueline Tilefish and Golden Tilefish (*Lopholatilus chamaelonticeps*).

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 24, 2015. As noted previously, no members of the public attended the above referenced hearing, however, comment was received by the Department via email with regard to the two management options referenced above. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The hearing record formally closed with regard to public comment at close of business on Thursday, July 9, 2015. In all, four comments had been received by members of the public, each offering an opinion as to which of the two management options discussed at the public hearing was best for Delaware's management of Tilefish. At that time, the comments were thoroughly reviewed by responsible Department staff and, at the request of the Hearing Officer, a Technical Response Document ("TRM") was subsequently prepared by Stewart Michels in response to the same. This TRM, dated August 27, 2015, set forth the Department's official endorsement of Option #2, to wit: an aggregated (i.e., both Blueline Tilefish and Golden Tilefish) seven (7) fish recreational possession limit and a 300 pound aggregated commercial possession limit, as it pertains to the proposed Amendments to Delaware's Finfish Regulations regarding Tilefish, and provided the Department's reasoning regarding same.

Among the factors considered by the Department's Division of Fish and Wildlife with regard to this endorsement were as follows: (1) both Golden Tilefish and Blueline Tilefish are long-lived and sedentary, making them susceptible to exploitation; (2) both species are poorly assessed (i.e., data limited) and recreational landings of both species are not fully accounted for in the respective stock assessments; (3) Option #2 will constrain harvest and prevent an unmanaged expansion of the Blueline Tilefish fishery until more data become available; (4) Option #2 measures are consistent with the MAFMC request, as well as measures adopted in both Maryland and Virginia; (5) Delaware does not have an active commercial tilefish fishery for either species that would be economically impacted; and that (6) the majority of public comment received favors the aggregated limits option.

While reviewing the proposed regulatory language when drafting the aforementioned TRM, substantive changes were made to the same by the Department's Division of Fish & Wildlife, in order to provide greater understanding to the regulated community regarding the term "possess". Specifically, this proposed regulatory promulgation now provides for the inclusion of the phrase, "aboard a vessel" following the word "possess" in

Sections (1.1), (1.2), and (1.3). This substantive change allows for the possession of multiple limits at someone's residence, hotel room, retail store, etc., however, given the distance at which this fishery is prosecuted (near the continental shelf), it is highly unlikely that a person or vessel would be able to land multiple times per day. Nevertheless, in the spirit of transparency, the Department deemed this post-hearing edit to be substantive, thus necessitating a re-noticing of the proposed regulation, and a re-publishing of the same for an additional 30 days to allow for public comment.

This proposed regulatory promulgation was re-published in the *Register of Regulations* on November 1, 2015, and comment was accepted through December 1, 2015. Accordingly, Mr. Michels provided this Hearing Officer with a *supplemental* TRM, dated December 7, 2015, which not only re-affirmed all information set forth in his initial TRM dated August 25, 2015, but also confirmed the re-publication of this proposed promulgation as described above, and that no opposition of the aforementioned clarification to the regulation language was received by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 11, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments to 7 **DE Admin. Code** 3500: *Tidal Finfish*, to include new Section 3542, to wit: *Tilefish*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory *revised* Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to (1) adopt new regulations with regard to Delaware's management of Tilefish, consistent with the MAFMC's request and input from Delaware's Advisory Council on Tidal Finfisheries; (2) constrain harvest and prevent an unmanaged expansion of the Blueline Tilefish fishery until more data become available; (3) implement the following possession limits for both Blueline Tilefish *and* Golden Tilefish, to wit: an aggregated (i.e., both Blueline Tilefish *and* Golden Tilefish) seven (7) fish recreational possession limit and a 300 pound aggregated commercial possession limit; and (4) provide additional clarity and a greater understanding to the regulated community with regard to the terms "possess" and "aboard a vessel" as a result of the substantive changes made to this proposed regulatory promulgation.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* Amendments to 7 **DE Admin. Code** 3500: *Tidal Finfish*, to include new Section 3542, to wit: *Tilefish*, pursuant to 7 **Delaware Code**, Sections §§901 (c & d), 903(e)(3);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* regulatory Amendments as final;

3. The Department provided adequate public notice of the initial proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on June 24, 2015, and held the record open through close of business on July 9, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware *Register of Regulations* on November 1, 2015, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on December 1, 2015, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* regulatory Amendments as set forth in its Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

6. The adoption of these proposed *revised* regulatory Amendments will allow Delaware to (1) adopt new regulations with regard to Delaware's management of Tilefish, consistent with the MAFMC's request and input from

Delaware's Advisory Council on Tidal Finfisheries; (2) constrain harvest and prevent an unmanaged expansion of the Blueline Tilefish fishery until more data become available; (3) implement the following possession limits for both Blueline Tilefish *and* Golden Tilefish, to wit: an aggregated (i.e., both Blueline Tilefish *and* Golden Tilefish) seven (7) fish recreational possession limit and a 300 pound aggregated commercial possession limit; and (4) provide additional clarity and a greater understanding to the regulated community with regard to the terms "possess" and "aboard a vessel" as a result of the substantive changes made to this proposed regulatory promulgation;

7. The Department has reviewed these proposed *revised* regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

8. The Department's proposed *revised* regulatory Amendments, as re-published in the November 1, 2015 *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

9. The Department shall submit this Order approving as final the proposed *revised* Amendments to 7 **DE Admin. Code** 3500: *Tidal Finfish*, to include new Section 3542, to wit: *Tilefish*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small
Secretary

3542 Tilefish

1.0 Tilefish possession limits

- 1.1 It is unlawful for a recreational fisherman to possess aboard a vessel more than seven (7) tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department.
- 1.2 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess aboard a vessel up to 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) in any number, provided said tilefish were taken using gear for which said person is lawfully permitted under 7 **Del.C.** §915.
- 1.3 It is unlawful for a person issued a valid commercial food fishing license to possess aboard a vessel more than 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*).

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 9.0 - Minimum Training Standards & In-Service Training, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify the minimum standards and in-service training requirements.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the minimum standards and in-service training requirements.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify the minimum standards and in-service training requirements.

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be February 11, 2016.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 10th day of December 2015.

BOARD OF EXAMINERS OF CONSTABLES:

Lt. Colonel Monroe B. Hudson, Jr.
Ralph K. Durstein, III, Esquire
Captain Laura O'Sullivan

Chief William E. Bryson
Mr. John F. Tharan

December 10, 2015

2400 Board of Examiners of Constables

1.0 Licensing

- 1.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 1.2 All applicants shall be required to submit an application and their fingerprints to the Professional Licensing Section on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 1.3 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable.
- 1.5 Applicants, who were prior law enforcement officers in any jurisdiction in the State of Delaware, and have been away from active law enforcement under five years, will be considered for commissions on a case-by-case basis. Applicants who were prior law enforcement outside the State of Delaware will be required to take, and pass, a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.6 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.7 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the class and submit to the MMPI/PAI.
 - 1.7.1 At the discretion of the Board, for good cause shown, the class may be waived.
- 1.8 If an applicant wishes to work for more than one agency, they must submit an application and be approved by the Board for each agency. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section.
- 1.9 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.10 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.11 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

2.0 Suspensions, Revocations and Appeals

- 2.1 The Director of the Professional Licensing Section shall have the power to suspend or revoke the commission of any individual issued a commission under 10 **Del.C.** Ch. 27 who violates the Chapter or the promulgated Rules and Regulations.
- 2.2 The Director of the Professional Licensing Section may issue an emergency suspension of any individual issued a commission, under 10 **Del.C.** Ch. 27, who has been arrested where that arrest could result in the conviction of any misdemeanor or felony that violates the Chapter or the promulgated Rules and Regulations.
- 2.3 Any individual whose commission has been placed on emergency suspension, suspended, revoked, or denied may, within 30 days of such notice, submit a written request of the appeal to the Director of the Professional Licensing Section.
- 2.4 A hearing before the Board will be convened on a date determined by the Board to resolve the appeal.
- 2.5 The Board decision, in writing, will be mailed to the applicant within 10 working days after the hearing.

3.0 Criminal Offenses

- 3.1 For the purposes of 10 **Del.C.** Ch. 27, the Director of the Professional Licensing Section may deny an application, suspend or revoke a commission if the applicant or commissioned individual has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):
 - 3.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:

- 3.1.1.1 §763 Sexual Harassment;
- 3.1.1.2 §764 Indecent Exposure 2nd Degree;
- 3.1.1.3 §765 Indecent Exposure 1st Degree;
- 3.1.1.4 §766 Incest;
- 3.1.1.5 §767 Unlawful Sexual Contact 3rd Degree;
- 3.1.1.6 §781 Unlawful Imprisonment 2nd;
- 3.1.1.7 §840 Shoplifting;
- 3.1.1.8 §861 Forgery;
- 3.1.1.9 §871 Falsifying Business Records;
- 3.1.1.10 §881 Bribery;
- 3.1.1.11 §907 Criminal Impersonation;
- 3.1.1.12 §1101 Abandonment of a Child;
- 3.1.1.13 §1102 Endangering the Welfare of a Child;
- 3.1.1.14 §1105 Crime Against a Vulnerable Adult;
- 3.1.1.15 §1106 Unlawfully Dealing with a Child;
- 3.1.1.16 §1107 Endangering Children;
- 3.1.1.17 §1245 Falsely Reporting an Incident;
- 3.1.1.18 §1341 Lewdness;
- 3.1.1.19 §1342 Prostitution;
- 3.1.1.20 §1343 Patronizing a Prostitute; and
- 3.1.1.21 §1355 Permitting Prostitution.

3.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities:

- 3.1.2.1 §1136 Violations.

3.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

- 3.1.3.1 §3913 Violations.

- 3.2 Anyone applying for commission under 10 **Del.C.** Ch. 27 shall not be issued a commission if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 3.3 The Director of the Professional Licensing Section may suspend anyone commissioned under 10 **Del.C.** Ch. 27 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

4.0 Reserved

5.0 Firearm's Policy

- 5.1 Section 5.0 shall apply only to individuals licensed under 10 **Del.C.** Ch. 27, while such individuals are acting in the performance of their duties as a constable.
- 5.2 No individual licensed under 10 **Del.C.** Ch. 27 shall carry a firearm unless the individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). The initial qualification course may be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 5.3 In order to carry a firearm, individuals licensed under 10 **Del.C.** Ch. 27 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days

between scheduled shoots. Of these three, there will be one mandatory "low light" shoot and may be combined with a day shoot. Two day shoots shall not be completed on the same date.

- 5.3.1 An individual not meeting the minimum qualifications set forth in subsection 5.3 may be suspended from carrying a firearm while acting in the performance of their duties as a constable until such time that they meet the minimum three qualifying shoots within the calendar year.
- 5.4 Only the handguns with the following calibers are permitted:
- 5.4.1 9mm;
 - 5.4.2 .357;
 - 5.4.3 .38;
 - 5.4.4 .40;
 - 5.4.5 .45; or
 - 5.4.6 .357 SIG.
- 5.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.6 Under no circumstances will anyone under this Rule be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.7 All individuals must meet the minimum qualifications set forth in subsection 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.8 All ammunition must be factory fresh (no re-loads).
- 5.9 The minimum passing score is 80%.
- 5.10 All licenses/commissions are valid for a period of two years, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year.
- 5.11 Firearms Instructors providing instruction under Section 5.0:
- 5.11.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), or another professional firearms training institution as a "certified firearms instructor".
 - 5.11.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
 - 5.11.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed/commissioned individuals.
- 6.0 Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs**
- 6.1 To carry the above weapons/items a constable must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.
- 6.2 Weapon/Item Instructors
- 6.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.
- 7.0 Conducted Electrical Weapon (CEW)**
- 7.1 In order for a constable to carry/use a conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.
- 7.2 CEW Instructors
- 7.2.1 All CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

8.0 Canine

- 8.1 In order for a constable to use a canine, he/she, and the canine, must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.
- 8.2 Canine Instructors
- 8.2.1 All canine instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

9.0 Minimum Training Standards and In-Service Training

- 9.1 The Constable Academy, administered through Delaware Technical Community College (DTCC) Workforce Development and Community Education (WDCE), shall instruct applicants in the minimum training standards established by the Board. The Academy shall be a minimum of 180.5 hours and include, but is not limited to the following courses:
- Introduction to law enforcement and constables; constitution and bill of rights; other police agencies/fire departments/ambulance jurisdictions; basic defensive driving; traffic investigations; criminal investigations; sex crimes; criminal code; handling person with disabilities; interventions with people suffering with mental health and substance abuse; civil disobedience; labor disputes (crowd control); active shooter; courtroom procedure and demeanor; cultural diversity and community relations; domestic violence; basic first aid; CPR; AED; NIMS 700; ICS 100; information systems – communications, report writing, DELJIS; interview/interrogation techniques; manual traffic control; juvenile procedures; laws of evidence and search and seizure; laws of arrest; police communication and crisis intervention; police discipline and ethics; baton/nightstick/pr24/chemical spray/handcuffing; officer survival/defensive techniques; patrol procedures; drug identification and controlled substances; canine; and 4th amendment.
- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
- 9.3 In-service training shall be every year. Odd years will be eight hours of classroom training through DTCC/WDCE. Even years will be done by completing an on-line modular and test through DTCC/WDCE.
- 9.3.1 All in-service training courses must be approved by the Board.
- 9.3.2 Failure to complete the in-service training every year shall be grounds for suspension or revocation of a current commission. Any commissioned individual not obtaining the in-service training for a given year by the last class offered shall be placed on emergency suspension immediately. Any training missed, or not completed, by a commissioned individual must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.
- 9.3.3 Any in-service training test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.
-

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))
24 **DE Admin. Code** 100

ORDER

100 Board of Accountancy

On September 1, 2014, the Delaware Board of Accountancy published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 3. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 19, 2014 at a regularly scheduled meeting of the Board of Accountancy to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

Two individuals provided verbal testimony at the public hearing. No written comments were received by the Board.

Lucinda Peterson: Ms. Peterson commented that the proposed amendments will restrict who can obtain a firm permit and who is permitted to use the title C.P.A.

Board response: The Board does not understand Ms. Peterson's comment. In the Board's view the question of firm ownership and use of the designation "C.P.A." are unrelated and use of the designation will not be affected by the amendment. No change was made in the final regulation in response to this comment.

Sharon Cirillo: Ms. Cirillo stated that she does not take issue with the proposed amendment but that publicly traded entities such as banks might. She suggested that the Board reach out to such entities so that the amendment does not impede their business practices.

Board response: The Board noted that the proposed amendment was properly noticed and is in accord with the Uniform Accountancy Act. No change was made in the final regulation in response to this comment.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §105(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed and considered all public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on September 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 18th day of November, 2015.

Delaware Board of Accountancy

Karen S. Schultz, CPA, President (absent)

Alison Houck, CPA

Prameela Kaza (absent)

John McManus, PA

Robert Mosch, Jr., CPA (absent)

Robert Paretta CPA

Gary Pippen

Judith Scarborough, CPA (absent)

Karen C. Smith, CPA

*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 212 (18 DE Reg. 212). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

300 BOARD OF ARCHITECTS

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 Del.C. §306(a)(1))
24 DE Admin. Code 300

ORDER

300 Board of Architects

The Delaware Board of Architects pursuant to 24 Del.C. §306(a)(1), proposed to revise its regulations. The proposed amendments to the regulations seek to allow licensees to carry over up to four continuing education credits every calendar year.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on October 1, 2015 a public hearing was held on November 4, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 – Affidavit of publication of the public hearing notice in the *News Journal*;

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*;

There was no verbal testimony given at the public hearing on November 4, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §306(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to allow licensees to carry over up to four continuing education credits every calendar year.

5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on January 1, 2016.

IT IS SO ORDERED this 2nd day of December, 2015 by the Delaware Board of Architects.

Kevin W. Wilson, President

Robert Maffia, RA

Todd Breck, RA

John Mateyko, RA

Paul Guggenberger, RA, Secretary

Donnell McNair, Public Member

Elizabeth Happoldt, Public Member

Rosemarie Vanderhoogt, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 124 (19 DE Reg. 124). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

300 Board of Architects

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))
24 DE Admin. Code 2500

ORDER

2500 Board of Pharmacy

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 16, 2015 at a scheduled meeting of the Delaware Board of Pharmacy ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed revisions address the subject of the pharmacy permit holder's responsibility for ensuring the availability of adequate staffing in the pharmacy department. An understaffed pharmacy department can compromise the delivery of services and thereby put the public at risk. Specifically, Regulation 3.8 is amended to provide that the "pharmacy permit holder shall ensure that, at all times that the pharmacy department is open for business, there shall be at least one fully trained technician immediately available in the facility to assist in the pharmacy at the pharmacist's request."

The proposed changes to the rules and regulations were published in the Delaware *Register of Regulations*, Volume 19, Issue 2, on August 1, 2015. Notice of the September 16, 2015 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 Del.C. §10118(a), the date to receive final written comments was October 1, 2015, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on October 21, 2015.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no comment presented by testimony or in writing as of the hearing date, September 16, 2015.

However, the following documents were received by the date of deliberations, October 21, 2015, and were marked as exhibits and considered by the Board:

Letter from Lisa Bowe, PharmD, dated 9/25/15

Letter from Christopher Smith, Director of Federal Public Policy, National Association of Chain Drug Stores, dated 9/29/15

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations.

The Board considered the written comments. The Board rejected the argument from Mr. Smith that the pharmacist-in-charge should be held responsible for staffing in the pharmacy. Clearly, the pharmacist-in-charge has no control over the staffing budget and the availability of appropriate support staff in the pharmacy. The proposed regulation shifts the responsibility to the permit holder, who does have control over staffing. Adoption of the regulation as proposed will permit the filing of complaints for non-compliance and checks for compliance during pharmacy inspections. The Board concludes that adoption of Regulation 3.8 advances professional practice standards and is in the best interest of the public. The Board, therefore, adopts the amendments to Regulation 3.8 as proposed.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 19, Issue 2, on August 1, 2015.

IT IS SO ORDERED this 18th day of November, 2015 by the Delaware Board of Pharmacy.

Susan Esposito, R.Ph., Professional Member, Vice President

Hooshang Shanehsaz, R.Ph., Professional Member, Vice President

Jay Galloway, Public Member

Bonnie Wallner, R.Ph., Professional Member

Tejal Patel, R.Ph., PharmD, Professional Member

Julia Wheatley, Public Member

Kimberly Robbins, R.Ph., Professional Member

Joli Martini, R.Ph., Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 125 (19 DE Reg. 125). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

ORDER

2500 Board of Pharmacy

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 19, 2015 at a scheduled meeting of the Delaware Board of Pharmacy ("Board") to receive

comments regarding the Board's proposed revisions to its rules and regulations.

The proposed revisions address the subject of pharmaceutical compounding. Regulation 5.1.7 is amended to provide that compounded products may not be sold to a practitioner for use in his or her office to administer to patients. Regulation 10.0 is re-written to establish comprehensive requirements for non-sterile and sterile compounding consistent with USP Chapters 795 and 797.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 19, Issue 1, on July 1, 2015. Notice of the August 19, 2015 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was September 3, 2015, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on September 16, 2015.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no comment presented by testimony or in writing as of the hearing date, August 19, 2015. However, the following documents were received by the date of deliberations, September 16, 2015, and were marked as exhibits and considered by the Board.

1. Email from Richard N. Spencer, Jr., VMD, White Clay Creek Veterinary Hospital, dated 9/2/15
2. Letter from Tracey Barkus, LVT, VCA Newark Animal Hospital, received 8/31/15
3. Letter from Melanese Jones, LVT, VCA Newark Animal Hospital, dated 8/26/15
4. Letter from Jennifer Arculus, DVM, VCA Newark Animal Hospital, dated 8/27/15
5. Letter from Shelly Boulware, VCA Newark Animal Hospital, dated 8/26/15
6. Letter from Amy Haines, LVT, VCA Newark Animal Hospital, dated 8/31/15
7. Letter from, Pecos Olurin, MD, et al., Delaware Academy of Ophthalmology, dated 9/2/15
8. Email from Joseph P. Olekszyk, DO, Nanticoke Ear, Nose and Throat, dated 9/3/15
9. Letter from Tarek S. Hassan, MD, et al., American Society of Retina Specialists, received 9/3/15
10. Letter from Alfonse Muto, RPh, Pine Pharmacy, dated 9/3/15
11. Letter from Michael Teixido, MD, et al., ENT & Allergy of Delaware, dated 9/3/15
12. Letter from Terri Corbo, PharmD, et al., Christiana Care Health Services, dated 8/21/15
13. Letter from David W. Dryden, RPh., JD, Executive Secretary, Delaware Board of Pharmacy, dated 9/2/15

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations.

The written comments submitted primarily addressed the issue of office use of compounded products, as set forth in Regulation 5.1.7.

With respect to Regulation 10.0, the Board finds that the re-written Regulation appropriately serves to update the Board's Regulations to comply with USP Chapters 795 and 797 and thereby advances professional practice standards and is in the best interest of the public. The Board, therefore, adopts the amendments to Regulation 10.0 as proposed.

With respect to Regulation 5.1.7, the Board considered the written comments. However, the Board determines that, pursuant to Federal requirements, compounded products, that are not patient specific, must be obtained from an outsourcing facility. The Board also finds that Regulation 5.1.7 is not clear and would benefit from revision. The Board, therefore, declines to adopt Regulation 5.1.7 as proposed. An amended version of Regulation 5.1.7 will be published in the *Register of Regulations* for subsequent hearing.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations is attached hereto as Exhibit "A."

IT IS SO ORDERED this 18th day of November, 2015 by the Delaware Board of Pharmacy.

Susan Esposito, R.Ph., Professional Member, Vice President

Hooshang Shanehsaz, R.Ph., Professional Member, Vice President

Jay Galloway, Public Member

Bonnie Wallner, R.Ph., Professional Member

Tejal Patel, R.Ph., PharmD, Professional Member

Julia Wheatley, Public Member

Kimberly Robbins, R.Ph., Professional Member

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

ORDER

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

NATURE AND STAGE OF THE PROCEEDINGS

On October 1, 2015, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 4. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 28, 2015 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on October 28, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by

testimony at the public hearing on the proposed amendments to the Board's regulations.

2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.

3. Pursuant to 24 **Del.C.** §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes seek to clarify and provide more detailed information regarding the credentials and experience required of supervisors of LACMH and LPCMH candidates.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on January 1, 2016.

SO ORDERED this 9th day of December, 2015.

BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Dr. Gregg Drevno, LPCMH (President)	Irvin Bowers, Public Member (Vice President)
Dr. Tracey Frazier, LCDP (Secretary) (absent)	Dr. William Northey, Jr., LMFT
Daniel Cherneski, LMFT	Ruth Banta, Public Member
Dr. Julius Mullen, LPCMH (absent)	Elizabeth Vassas, Public Member (absent)
James Elder, LCDP	Dr. Rosemary Madl-Young, LCDP
Daniel Cooper, LPCMH	Sherry Lambertson, Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 283 (19 DE Reg. 283). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

DIVISION OF PROFESSIONAL REGULATION

4100 BOARD OF HOME INSPECTORS

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1))
24 **DE Admin. Code** 4100

ORDER

4100 Board of Home Inspectors

NATURE AND STAGE OF THE PROCEEDINGS

On September 1, 2015, the Delaware Board of Home Inspectors published proposed regulations in the Delaware *Register of Regulations*, Volume 19, Issue 7. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 13, 2015 at a regularly scheduled meeting of the Delaware Board of Home Inspectors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on October 13, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed regulations.
2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen day period following the public hearing.
3. Pursuant to 24 **Del.C.** §4106(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed rules and regulations reiterate that a trainee home inspector must obtain his/her trainee registration prior to performing any supervised home inspections. The Home Inspector Practice Act mandates that anyone who performs inspections, even if supervised by a Delaware licensed home inspector, must first obtain a trainee registration. Board Regulation 10.1 requires trainees to complete 75 supervised home inspections before becoming eligible for full licensure, and, under 24 **Del.C.** §4107(c) a trainee can only begin to accumulate such inspections after his/her application for registration as a trainee is approved and granted by the Board.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

SO ORDERED this 17th day of November, 2015.

BY THE DELAWARE BOARD OF HOME INSPECTORS

Donald Pyle, Sr., Chairman (absent)

Timothy Harriger

Dennis Theoharis, Vice Chairman (absent)

J. Wes Mast

Joyce Edwards

***Please note that no changes were made to the regulation as originally proposed and published in the September 2015 issue of the *Register* at page 184 (19 DE Reg. 184). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4100 Board of Home Inspectors

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

Secretary's Order No.: 2015-A-00XX

RE: Approving Final Revision to the Delaware State Implementation Plan (SIP) to address the Clean Air Act (CAA) Section 110 Infrastructure Elements for the 2012 Fine Particulate Matter (PM2.5) National Ambient Air Quality Standards (NAAQS)

Date of Issuance: November 16, 2015

Effective Date of the Amendment: December 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed Revision to the Delaware State Implementation Plan ("SIP") to address the Clean Air Act ("CAA") Section 110 Infrastructure Elements for the 2012 Fine Particulate Matter (PM2.5) National Ambient Air Quality Standards ("NAAQS"). On December 14, 2012, the United States Environmental Protection Agency ("U.S. EPA", "EPA") promulgated a new National Ambient Air Quality Standard for fine particulate matter (PM2.5) at an annual average ambient concentration of 12.0 micrograms per cubic meter (mg/m³) annual arithmetic mean concentration. The purpose of this proposed SIP revision is to detail to the EPA how Delaware meets all of the necessary measures required by the CAA, specifically, CAA Section 110(a)(2), relative to the 2012 PM2.5 NAAQS. Each state's Infrastructure SIPs are due to the EPA three (3) years after promulgation of a new Rule (i.e., December 14, 2015).

Pursuant to Sections 110(a)(1) and 110(a)(2) of the CAA, each state is required to submit to the EPA a SIP to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Section 110(a)(2) lists the required plan elements, which include enforceable emission limits and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. This proposed SIP revision fulfills this requirement relative to the 2012 PM2.5 NAAQS.

Under the heading, "Delaware's Plan" in Section 2.0 of this document, Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2012 PM2.5 NAAQS is being implemented, maintained and enforced. In Appendix A of this document, Delaware provides a technical demonstration of how it meets CAA Section 110(a)(2)(D)(i)(I) requirements. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

The Department's Division of Air Quality ("DAQ") published its initial proposed SIP revision, along with its formal *Register* Notice, in the October 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on October 28, 2015, at which time the proposed SIP revision was presented and thoroughly vetted by the Department.

No members of the public attended said public hearing, and no comment was received by the Department at any time with regard to this matter. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 12, 2015, however, none was received during the post-hearing phase. All proper notification and noticing requirements concerning this proposed SIP revision were met by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 13, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed SIP revision as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed SIP revision to address the Clean Air Act Section 110 Infrastructure Elements for the 2012 PM_{2.5} NAAQS is well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed SIP revision as referenced above be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the aforementioned SIP revision. The promulgation of the aforementioned proposed SIP revision will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the Clean Air Act.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision to address the Clean Air Act Section 110 Infrastructure Elements for the 2012 PM_{2.5} NAAQS, pursuant to 7 **Del.C.**, Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.**, Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the aforementioned proposed SIP revision and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the time of the public hearing held on October 28, 2015, and held the record open through close of business on November 12, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on this proposed SIP revision before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed SIP revision as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the aforementioned proposed SIP revision will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the Clean Air Act;

6. The Department has reviewed the aforementioned proposed SIP revision in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.**, Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed SIP revision, as published in the October 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final SIP Revision, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed SIP revision to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Kara S. Coats, Acting Secretary
(for David S. Small, Secretary)

**Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards (NAAQS)
State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For
the**

GENERAL NOTICES

2012 Fine Particulate Matter NAAQS

September 12 December 13, 2015

Proposed Final

1.0 Background

On December 14, 2012, the Environmental Protection Agency (EPA) promulgated a new National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM_{2.5}) at a level of 12.0 micrograms per cubic meter (mg/m³) annual arithmetic mean concentration.¹ Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to submit to the EPA a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.² This SIP revision fulfills this requirement relative to the 2012 PM_{2.5} NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled in the Code of Federal Regulations at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2012 PM_{2.5} NAAQS. Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2012 PM_{2.5} NAAQS is being implemented, maintained and enforced. ~~In Appendix A of this document Delaware provides a technical demonstration of how it meets CAA § 110(a)(2)(D)(i)(I) requirements.~~ The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law³, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2012 PM_{2.5} NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table 1-1 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section element	110(a) Summary of element	Provisions in the Delaware SIP or recent revisions	Current or recent SIP	Where Codified or approved by EPA
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1. 78 FR 3086

2. SIPs meeting CAA §110(a)(1) and (2) are also known as "infrastructure" SIPs.

3. Referred to in this document as "7 Del. C." followed by the specific section citation (e.g., §6005).

§110(a)(2)(A)

Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

For the 2012 PM_{2.5} NAAQS, the following emission limitations and schedules contained in Delaware's approved SIP. 40 CFR 52.420(c)

- 7 **DE Admin. Code** 1101^a, Definitions And Administrative Principles
- 7 **DE Admin. Code** 1108, Sulfur Dioxide Emissions From Fuel Burning Equipment
- 7 **DE Admin. Code** 1110, Control of Sulfur Dioxide Emissions Kent And Sussex Counties
- 7 **DE Admin. Code** 1113, Open Burning Regulation
- 7 **DE Admin. Code** 1124, Control of Volatile Organic Compound Emissions
- 7 **DE Admin. Code** 1126, Motor Vehicle Emissions Inspection Program
- 7 **DE Admin. Code** 1131, Low Enhanced Inspection And Maintenance Program
- 7 **DE Admin. Code** 1140, National Low Emission Vehicle Program
- 7 **DE Admin. Code** 1141, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products
- 7 **DE Admin Code** 1142, Specific Emission Control
- 7 **DE Admin. Code** 1145, Excessive Idling Of Heavy Duty Vehicles,
- 7 **DE Admin. Code** 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation
- 7 **DE Admin. Code** 1148, Combustion Turbine Generator Emissions
- 7 **DE Admin. Code** 1144, Stationary Generator Emissions

GENERAL NOTICES

- §110(a)(2)(B)** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. 7 **DE Admin. Code** 1117 Source Monitoring, Record Keeping And Reporting and 7 **DE Admin. Code** 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality. 40 CFR 52.420(c)
- §110(a)(2)(C)** Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D; Delaware implements its Construction and Operation Permit Program requirements under 7 **DE Admin. Code** 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the PM_{2.5} NAAQS. 40 CFR 52.420(c)
- 7 **DE Admin. Code** 1125 fulfills parts C and D of Title I of the CAA; governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the Delaware SIP. Under 1125 any major source or modification that results in a net significant increase of direct PM_{2.5} (10 TPY or greater) must apply Best Available Control Technology (BACT) to reduce PM_{2.5} emissions.
- 7 **DE Admin. Code** 1102 provides for the evaluation and necessary regulation of any stationary source that emits equal to or greater than 0.2 lb of any air contaminate, including PM_{2.5}, in any one day.
- In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to 7 **DE Admin. Code** 1102 and 1125.

§110(a)(2)(E)(iii)	(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;	The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.	
§110(a)(2)(F)	Require, as may be prescribed by the Administrator— (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;	§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include to 7 DE Admin. Codes 1117 and 1103. These requirements are included in Delaware’s SIP, as necessary. §110(a)(2)(F)(ii): Specific emission reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include 7 DE Admin. Code 1117. These requirements are included in Delaware’s SIP. These regulations in Delaware’s approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2012 PM _{2.5} NAAQS.	40 CFR 52.420(c)
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 DE Admin. Code 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware’s SIP.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2012 PM _{2.5} NAAQS.	
§110(a)(2)(J) (PSD)	Meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware’s PSD requirements are promulgated in 7 DE Admin. Code 1125, Preconstruction Review.	

- a. Delaware's air quality regulations are codified in Delaware's administrative code, - Title 7 Natural Resources and Environmental Control, 1100 Air Quality Management Section. Citations are expressed in this document as "7 DE Admin. Code" followed by the specific subpart of 1100. All portions of the DE Admin. Code referred to in this document are already included in Delaware's SIP.

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions for the 2012 PM_{2.5} NAAQS. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A-M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

- (A) §110(a)(2)(A) Requirement:** Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated with the 2012 PM_{2.5} NAAQS. See Table 1-1 under section 110(a)(2)(A). On June 12, 2015 (80 FR 33840), EPA finalized a SIP Call which identifies several provisions from many states which EPA asserts are substantially inadequate for CAA sections 302 and 110 purposes. Some provisions are inadequate for inappropriate emission exemptions, some for affirmative defenses, and some for director discretion. One of the state SIPs which contains these identified provisions is Delaware. Some of the provisions identified by Delaware for CAA section 110(a)(2)(A) for this SIP for 2012 PM_{2.5} NAAQS are included in the SIP Call. Delaware intends to respond to the SIP Call within the timeframe provided by EPA and the CAA. However, Delaware does not believe its response to the SIP Call for the identified provisions affects Delaware's conclusion that its SIP contains enforceable emission limitations and other control measures as are necessary and appropriate to meet applicable requirements of the CAA. Delaware's current status of the 2012 PM_{2.5} and 1997/2006 PM_{2.5} NAAQS are attainment. Delaware's response to the SIP Call will be done in such a way to ensure Delaware continues to have sufficient provisions for CAA section 110 including enforceable measures to ensure the SIP meets requirements in the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del.C., Chapter 60. This authority is applicable to the 2012 PM_{2.5} NAAQS.

- (B) §110(a)(2)(B) Requirement:** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2012 PM_{2.5} NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports PM_{2.5} concentrations from our monitoring sites located in Wilmington near MLK Boulevard, Newark, Delaware City, Bellefonte, Summit Bridge, Dover, Felton and Seaford.

- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

(C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware, through its Division of Air Quality, exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) **§110(a)(2)(D) Requirement:** Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126⁴ and 115⁵ (relating to interstate and international pollution abatement).

Delaware's Plan: Delaware's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS, to include the 2012 PM_{2.5} NAAQS, and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- Delaware Code Title 7, Chapter 60 §6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to

regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.

- 110(a)(2)(D)(i)(I): In December, 2013 Delaware recommended to the USEPA that all of Delaware be designated attainment for PM_{2.5} based on Delaware's ambient monitoring network and the evaluation of impacts on neighboring states.⁶ Delaware and the surrounding states of Maryland and New Jersey do not have any PM_{2.5} nonattainment areas. Pennsylvania has determined that nonattainment for PM_{2.5} in nearby Delaware County is caused by local, not regional, sources.⁷ In August, 2014 Delaware received EPA's response letter which said that Delaware's air quality data "do not indicate any violation of the 2012 annual PM_{2.5} NAAQS in Delaware or contribution to any nearby area." Accordingly, EPA designated the entire State of Delaware as "unclassifiable/attainment" on January 15, 2015 (80 FR 2206). This reaffirms EPA's conclusion that Delaware does not contribute to downwind areas. See Appendix A, "Demonstration of Adequate Provisions in SIP (CAA § 110(a)(2)(D)(i)(I))"
- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the PSD requirements which are contained in Section 3.0 of 7 DE Admin Code 1125, Preconstruction Review. All major stationary sources are subject to Prevention of Significant Deterioration (PSD) permitting programs under the PSD of 7 DE Admin. Code 1125, Preconstruction Review. The requirements of 1125 ensure no new or modified PM_{2.5} emitting source will cause or contribute to non-attainment in any area.
- The visibility prong of §110(a)(2)(D)(i)(II) has been met through two approved regional haze SIPs. Delaware's initial regional haze SIP was approved on July 19, 2011 (76 FR 42557). Delaware's "5-Year Progress" regional haze SIP was approved on May 5, 2014 (79 FR 25506).
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,⁸ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the

4. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E) (iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

Delaware's Plan: For §110(a)(2)(E)(i), Delaware has adequate authority under state law pursuant to 7 Del.C. Chapter 60 to carry out its SIP obligations with respect to the 2012 PM_{2.5} NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines under 7 Del.C. Chapter 60. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

For § 110(a)(2)(E)(ii), Delaware finalized a SIP document that satisfies CAA §110(a)(2)(E)(ii) and § 128 by including in the SIP applicable requirements of 29 Del.C., Ch. 58, "Laws Regulating the Conduct of Officers and Employees of the State." This final document was submitted to the EPA as a SIP revision on January 11, 2013 and was approved and published in the Federal Register on April 17, 2013 (78 FR 22785).

- (F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

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5. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.
6. All air quality monitors in the State of Delaware are recording ambient PM_{2.5} air quality data which are substantially below the annual NAAQS (i.e., 2012-2014 data show the highest 3-year design value (DV) is 9.8 ug/m³ in New Castle county, while Kent and Sussex counties' DVs are both below 8.5 ug/m³).
7. Commonwealth of Pennsylvania, Final Designation Recommendations for the 2012 PM_{2.5} Standard, available at http://www.dep.state.pa.us/dep/deputate/airwaste/ag/attain/pm25des/Final_Designation_Recommendations.pdf

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Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of PM_{2.5} emissions and emissions related-data from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 Del.C. Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 Del.C. Chapter 100.

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;⁹

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

7 Del.C. §6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 Del.C. §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 Del.C. §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 Del.C. §6018). Thus, it necessarily follows that any discharge of an air contaminant, including PM_{2.5}, that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

- (H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

- (I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).
Delaware's Plan: This does not apply because no part of Delaware is designated nonattainment for the 2012 PM_{2.5} NAAQS.

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8. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

- (J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).¹⁰

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- 7 DE Admin. Code 1132, Transportation Conformity, provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomico MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to 7 Del. C. Chapters 29 and 60, which include publication in the newspapers and in the *Delaware Register*, and which have allowed for comment by both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.
- DNREC makes real-time and historical air quality information available on its Web site.
- PSD requirements necessary to implement the 2012 PM_{2.5} NAAQS are SIP approved and implemented through the requirements of 7 DE Admin. Code 1125, Preconstruction Review.
- With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2012 PM_{2.5} NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA. EPA approved the regional haze SIP on July 19, 2011 (76 FR 42557). EPA also approved the "5-Year Progress" regional haze SIP on May 5, 2014 (79 FR 25506).

- (K) **§110(a)(2)(K) Requirement:** Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Delaware's Plan: Delaware has the authority and capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform

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9. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling data as part of Delaware's relevant SIP submissions, permit actions,¹¹ and through federal grant commitments or in other ways that EPA may request.

- (L) **§110(a)(2)(L) Requirement:** Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. §§6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (M) **§110(a)(2)(M) Requirement:** Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del.C. §§6006 and 6010 and 29 Del.C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. The public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

10. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

11. Permit modeling requirements are specified in Section 3.0 of DE Admin Code 1125, Requirements for Preconstruction Review, as approved by EPA on October 2, 2012 (77 FR 60053).

Based on the information provided, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M) for the 2012 PM_{2.5} NAAQS.

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 Del.C. Ch.40)
7 DE Admin. Code 5101

REGISTER NOTICE SAN #2015-10

5101 Sediment and Stormwater Regulations

1. TITLE OF THE REGULATIONS:

5101 Sediment and Stormwater Regulations with reference to Technical Document

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Please take notice that the proposed amendments to 5101 Sediment and Stormwater Regulations with reference to Technical Document previously published in the December 2015 issue of the Delaware *Register of Regulations* is hereby withdrawn by the Department to allow more time for public input.

Additionally, the public hearing previously noticed to take place on January 5, 2016 with regard to these proposed regulatory amendments has been canceled. No new date for said hearing has been scheduled at this time.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

Not applicable.

6. NOTICE OF PUBLIC COMMENT:

The public hearing for **Regulation No. 5101 Sediment and Stormwater Regulations** scheduled for Tuesday, January 5, 2016, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901 **has been canceled**.

The Regulatory Advisory Committee will be convened. Notice of the date and time of the Regulatory Advisory Committee meetings will be provided on the State of Delaware Public Meeting Calendar.

For additional information please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, Elaine.Webb@state.de.us.

7. PREPARED BY:

Elaine Z. Webb December 14, 2015
(302) 739-9921
Elaine.Webb@state.de.us

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, January 21, 2016 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
602 Motor Vehicle Physical Damage Appraisers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance **Regulation 602** relating to **Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8]**. The docket number for this proposed AMENDED regulation is 2803-2015.

Amendments are being proposed to permit the use of digital imaging by appraisers. The Delaware Code authority for the change is 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: Rhonda.West@state.de.us

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE**1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1301** relating to **Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims**. The docket number for this proposed regulation is 2999.

The proposed amended regulation amends the current regulation to bring it in compliance with federal statutes and The Centers for Medicare & Medicaid Services' guidelines. Certain provisions are also being removed and placed in a new regulation for arbitration of disputes between health insurance carriers and non-network providers of emergency care services. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 332, 6408, 6416, and 6417; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials

concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1313** relating to **Arbitration of Health Insurance Disputes Between Carriers and Providers**. The docket number for this proposed regulation is 3001.

The proposed amended regulation adds clarifying definitions, revises the filing procedure for arbitration requests, adds a provision addressing the allocation of arbitration costs, and adds a requirement for carriers to maintain arbitration records for 5 years after the completion of the arbitration process. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 333, and 6408; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1315** relating to **Arbitration of Health Insurance Disputes Between Individuals and Carriers**. The docket number for this proposed regulation is 3001.

The proposed regulation contains provisions related to arbitrations under 18 **Del.C.** §332, which were previously contained in Regulation 1301 and also contains modifications of some of those provisions. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311 and 332; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

www.delawareinsurance.gov/departments/documents/ProposedRegs/.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
 Delaware Department of Insurance
 841 Silver Lake Boulevard
 Dover, DE 19904
 Phone: (302) 674-7379
 Fax: (302) 739-5566
 Email: rhonda.west@state.de.us

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1316** relating to **Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services**. The docket number for this proposed regulation is 3002.

The proposed regulation moves the provisions related to arbitrations under 18 **Del.C.** §§3349 and 3565 from current Regulation 1301 to a stand-alone regulation. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 3349, and 3565; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, February 1, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
 Delaware Department of Insurance
 841 Silver Lake Boulevard
 Dover, DE 19904
 Phone: (302) 674-7379
 Fax: (302) 739-5566
 Email: rhonda.west@state.de.us

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
SECURITIES UNIT
PUBLIC NOTICE

104 Privacy Policies For Commercial Online Sites, Services, And Applications

The Consumer Protection Unit of the Department of Justice hereby gives notice of proposed **Consumer Protection Unit Regulation 104** relating to **Privacy Policies For Commercial Online Sites, Services, And Applications**.

Senate Substitute No. 1 for Senate Bill No. 68, as amended by Senate Amendment Nos. 1, 2, and 3, of the 148th General Assembly requires operators of commercial Internet websites, online or cloud computing services, online applications, or mobile applications to that collect personally identifiable information through the Internet about individual users residing in Delaware who use or visit the operator's commercial internet website, online or cloud computing service, online application, or mobile application to make their privacy policies conspicuously available on their internet website, online or cloud computing service, online application, or mobile application as of January 1, 2016. The applicable legislation is now found in Chapter 12C, Title 6 of the **Delaware Code**.

The proposed regulation sets forth optional "safe harbor" language that operators may, but are not required to, use in their privacy policies that the Consumer Protection Unit has determined will comply with the disclosure requirements of 6 **Del.C.** §1205C(b). The proposed regulation also declares that the Consumer Protection Unit will treat privacy policies which comply with the disclosure requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§ 22575–22579, as also complying with the requirements of 6 **Del.C.** §1205C. The proposed regulation does not foreclose operators from using other language and formats of their own choosing to comply with 6 **Del.C.** §1205C(b). The Delaware Code authority for this proposed regulation is 29 **Del.C.** §2521.

The Consumer Protection Unit will not hold a public hearing on the proposed regulation. The proposed regulation appears below. Any person who wishes to submit suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation must submit the same by USPS Mail or email no later than 4:30 p.m. EST, Monday, February 1, 2016. Submissions by email should include "Privacy Policies For Commercial Online Sites, Services, And Applications" in the subject line of the email. Submissions must be directed to:

Christian Douglas Wright
Director, Consumer Protection Unit
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
email: christian.wright@state.de.us

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE
3900 Wildlife

The Department of Natural Resources & Environmental Control (DNREC) initiated the development of regulations pertaining to establish reporting requirements for gray fox taken, killed or captured; also to ensure consistency with and to clarify the allowable timeframe and methodology for reporting coyote and nutria harvests. Reporting requirements were presented to the public in proposed form (19 DE Reg. 176 (09/01/15)) and a public hearing on the matter was held September 22, 2015 at 6:30 PM in the DNREC Auditorium, Dover, DE. The hearing record was closed on October 7, 2015. Following careful consideration of the hearing record and in response to public input received during the regulatory process, which was largely in opposition of the proposal for a next business day harvest reporting requirement, the Division is proposing to adjust its previously proposed harvest reporting requirement to rather allow reporting gray fox harvest within seven (7) calendar days of harvest (i.e., reporting within a week).

No additional hearing will be held; the Department will receive written comment through February 1, 2016. Individuals may submit written comments regarding the proposed clarification to 7 **DE Admin Code** §3542 via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

PUBLIC NOTICE

1302 Regulations Governing Hazardous Waste

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the characteristics of ignitability to mirror the federal requirements. Additionally, the proposed modifications will correct typographical and reference errors.

A public hearing on the proposed amendments to DRGHW will be held on Thursday, January 21, 2016 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will be open January 1, 2016. Interested parties shall submit comments in writing by the end of the comment period, as designated by the hearing officer at this hearing and/or statements and testimony may be presented either orally or in writing at the January 21, 2016 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATER

PUBLIC NOTICE

7301 Regulations Governing the Construction and Use of Wells

The purpose of this action is to modernize the well construction regulations not modified since 1997 and streamline the process for addressing well construction and siting problems.

The Department held four (4) public workshops to obtain public input and discussion of the proposed changes to the well construction regulations. In addition, the Department participated in several committees both internal and external that reviewed and provided suggestions to changes to the regulations.

The major changes contained in this proposed regulation were the addition of new water well types, technology changes, incorporation of on-line permit application and related electronic options, aligning with related regulations, clarification of special permit requirements such as for emergencies, updating regulatory language to meet several legislative bills regarding advertising and issuance of well permits within water service areas (Certificates of Public Convenience and Necessity), and incorporation of guidelines and policies to account for industry modernization and practices.

The hearing record on the proposed changes to the *Regulations Governing the Construction and Use of Wells* will be open **January 1, 2016**. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on **February 1, 2016** beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 Del.C. §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to eliminate the continuing education ethics requirement. The Board will hold a public hearing on the proposed rule changes on January 21, 2016 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****2930 Council on Real Estate Appraisers**

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the AQB criteria are amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on February 16, 2016 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board to Flora Peer at the above address in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the use of telehealth services for the provision of Mental Health Counseling, Chemical Dependency Counseling, or Marriage and Family Therapy.

The Board will hold a public hearing on the proposed rule change on January 27, 2016 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until February 11, 2016.

PUBLIC SERVICE COMMISSION**PUBLIC NOTICE****3001 Rules for Certification and Regulation of Electric Suppliers**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. Please file written comments either in the Commission's electronic filing system, "DelaFile", available at <https://delafile.delaware.gov/>, click Public Comment under the Public Link or send to the Commission's address listed below.

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904

Attn: Reg. Doc. 49

The Commission encourages the public to submit written comments on or before **February 1, 2016**, but the last date to submit written comments will be on **February 8, 2016**.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on **February 23, 2016 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8830 (December 15, 2015) (the "Order") and the proposed revised Supplier Rules in the January 2016 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <https://delafile.delaware.gov/>.

If you would like to review documents at the Commission's offices, please contact Ashley Lyon at ashley.lyon@state.de.us to arrange a time for your review. You may also review copies of these documents at the Wilmington office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 or the Dover office located at 29 S. State Street, Dover, DE 19901. Please call the Wilmington office at (302) 577-5077 or the Dover office at (302) 241-2555 to arrange for a time to review the documents at that location.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at http://sos.delaware.gov/foia_requests.shtml. The Commission will respond to your request in accordance with the provisions of the Freedom of Information Act, 29 **Del.C.** Ch. 100.

If you have a disability and wish to participate or to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to psc@state.de.us, include "Regulation Docket 49" in the subject.

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PUBLIC NOTICE

2222 School Bus Driver Qualifications and Endorsements

The Delaware Department of Transportation, Division of Motor Vehicles (the "DMV") hereby gives notice of intent to update the School Bus Driver Qualification and Endorsements regulation to meet Delaware State Law and Federal Regulation changes.

This proposal is pursuant to Senate Bill 39 with Senate Amendment 1 of the 147th General Assembly, which went into effect July 8, 2015. This Bill brought Delaware into compliance with the Federal Motor Carrier Safety Administration's commercial driver license and commercial learner permit issuance standards. This Bill added new definitions and commercial learner permit specifications to Delaware law. Other changes include limiting certain endorsements to the commercial learner permit and adding new restrictions to the commercial driver license.

The DMV will take written comments on these proposed revisions to Section 2222 of Title 2, Delaware Administrative Code, from January 1, 2016 through January 31, 2016.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.

DIVISION OF MOTOR VEHICLES
DRIVER SERVICES
PUBLIC NOTICE

2225 Delaware Driving Privilege Permit and Driving Privilege Card

The Delaware Division of Motor Vehicles (DMV) gives notice of intent to create a new regulation Title 2 Transportation Regulation 2225 Delaware Driving Privilege Permit and Driving Privilege Card. This regulation pertains to the rules and regulations of the Delaware Driving Privilege Card created by Senate Bill 59 of the 148th General Assembly.

The DMV will take written comments on the proposed new Regulation 2225 of Title 2, Delaware Administrative Code, from January 1, 2016 through January 31, 2016.

The public may submit their comments to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers.

DIVISION OF TRANSPORTATION SOLUTIONS

PUBLIC NOTICE

2401 Utilities Manual Regulations

Under Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted a Utilities Manual. The Department has now drafted revisions to the Utilities Manual. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Utilities Manual from January 1, 2016 through January 31, 2016. Copies of the Draft DelDOT Utilities Manual Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be supplied in writing to: Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions, Delaware Department of Transportation P.O. Box 778 Dover, DE 19903 (302) 760-2515 (telephone) (302) 739-8282 (fax) eric.cimo@state.de.us.
